The 2020 bankruptcy law reform in Brazil: Evidence from the first five years of implementation

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This paper examines the outcomes of Brazil's 2020 Bankruptcy Law Reform, focusing on the first years of its implementation. The reform introduced key modifications across bankruptcy procedures, aiming to enhance credit recovery, expedite processes, and promote the reallocation of assets and entrepreneurs toward more productive activities. By analyzing judicial data from the São Paulo Court of Justice and aggregate bankruptcy data from Serasa Experian and the National Council of Justice, the paper documents early evidence on the use of the main instruments introduced or modified by the reform. The no-asset liquidation provision is being used more frequently to close both recent and long-standing proceedings, with court congestion as a limiting factor. The evidence also points to greater use of the out-of-court reorganization, although still small relative to judicial reorganization. Tax transaction is becoming more relevant than previous instruments in judicial reorganizations, while DIP financing remains concentrated among larger-debt cases. Preliminary examination has become an important procedural tool, whereas early-stay requests appear to have moved from unusually complex cases to the average active reorganization. There is no evidence of a differential post-reform shift in filings and acceptances by firm size, nor in plan confirmations in general, while the agricultural sector stands out after the reform clarified access to reorganization for sole proprietor farmers. Overall, the findings suggest a reform that is beginning to change legal practice through specific procedural instruments, but whose broader effects remain uneven, still maturing, and constrained by court capacity, backlog, and the timing of post-reform cohorts.

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1. Introduction

Over the past decades, extensive research has focused on the relationship between institutions and economic development. Notably, institutions linked to credit markets are considered particularly important, as they are crucial for the efficient transformation of private savings into investments.

Among these institutions, bankruptcy laws play a significant role in determining how effectively these markets function. Well-designed bankruptcy laws provide incentives for entrepreneurs to start their businesses, for established firms to grow, and for investors to supply them with capital. When businesses face financial distress, these laws should minimize the inefficient continuation of nonviable firms and the unnecessary liquidation of viable ones, thereby facilitating the reallocation of production factors to more productive uses. Striking this delicate balance when assigning bargaining power to creditors and debtors should be the primary goal of such laws.

Historically, developing countries have struggled significantly in this area, prompting many to enact legal reforms in recent decades to reduce inefficiencies related to bankruptcy procedures. Brazil was among these countries, enacting a comprehensive reform of its bankruptcy code in 2005, substituting legislation that had been in place since the 1940s. One of its major changes was the introduction of a reorganization procedure inspired by the Chapter 11 of the U.S. Bankruptcy Code, replacing the ineffective *concordata*. Although similar in spirit, the older procedure was considered too protective of owners and managers, reportedly being used to halt loan payments rather than assist firms in reorganizing and paying their creditors (Araujo and Funchal, 2005). Another important change was reducing the priority of repayment of tax and labor claims in liquidation, which were considered too high to serve as an effective credit recovery mechanism. Additionally, the reform introduced special priority for new credits during reorganization (DIP financing) and established an out-of-court reorganization procedure inspired by the prepackaged bankruptcy procedure in the U.S. Bankruptcy Code.

Evidence suggests that the 2005 reform positively impacted the credit market by enhancing creditor protection, resulting in a reduction in credit costs, an increase in long-term credit, greater use of secured loans, higher output, and more investment, particularly in areas where courts resolved cases more expediently (Araujo et al., 2012; Ponticelli and Alencar, 2016). This heterogeneity highlights that the consequences of legal reforms are endogenous to the institutions entrusted with their implementation. The Judiciary plays a particularly crucial role in ensuring these changes are effective. For example, Ponticelli and Alencar (2016) illustrate how courts influence *ex ante* outcomes, while Araujo et al. (2023) and Bernstein et al. (2019) provide evidence on the impact of judges' differing interpretations of the law on *ex post* outcomes, such as the reallocation of labor and capital into more efficient uses. Furthermore, as time passes, higher courts establish more solid interpretations of legal texts, which often take unexpected directions from what lawmakers envisioned.

Given all these frictions, designing an ideal bankruptcy law is immensely challenging. The complexity of balancing multiple stakeholders' interests, navigating informational, coordination, and institutional problems, and accounting for the political economy landscape makes creating a flawless bankruptcy law next to impossible. And while

the 2005 reform achieved much, it had areas that could be improved. So, in 2020, lawmakers chose to amend it. This led to the enactment of Law 14,112/2020,[1] producing a new iteration of Brazil's bankruptcy law. This most recent revision introduced changes to the three bankruptcy procedures outlined in the law: liquidation, reorganization, and out-of-court reorganization.

This paper aims to discuss and investigate the outcomes observed during the first years since the most recent iteration of the Brazilian bankruptcy law came into effect, focusing on its key modifications across the three bankruptcy procedures. To gain insights into its possible early impacts, we collected data from the São Paulo Court of Justice website on cases filed in the state between 2005 and May 2026. This data encompasses judges' decisions throughout the procedures. We specifically identified mentions of legal provisions and the outcomes of these procedures from the text of the decisions, using mostly descriptive analysis to summarize and interpret these findings. Although this data offered a wealth of detailed case information, it did not permit an analysis based on firm size and sector. To address this limitation, we collected aggregate bankruptcy data from Serasa Experian for the entire country to examine the reform's effects across these dimensions.

Regarding liquidations, this type of procedure has been considered extremely ineffective for both creditors and debtors. Besides rendering it an ineffective alternative for firms facing financial distress, this ineffectiveness has the potential to distort the decisions of both creditors and debtors during a reorganization procedure, as they seek to avoid an inefficient liquidation. Recognizing these inefficiencies, the most significant legal changes enacted in 2020 were designed to expedite and enhance the process, increase credit recovery, and facilitate the swift return of entrepreneurs and assets to the economy. Besides expanding the possibilities for converting a reorganization into liquidation, the rules for asset sales during liquidation were made more flexible, and a provision was introduced to end the procedure more quickly in situations where assets are insufficient to cover procedural costs.

The 2020 reform also introduced several significant changes to reorganization procedures, encompassing both amendments to existing provisions and the introduction of new ones. One notable change relates to the treatment of tax liabilities, expanding the options for tax settlement and installment payments – with longer deadlines for micro and small firms – and including provisions for converting to liquidation in cases of noncompliance. The reform also aimed to enhance incentives for Debtor-In-Possession (DIP) financing by granting payment priority in reorganization plans and increasing priority in liquidation scenarios. Additionally, the reform formalized preliminary examination before granting reorganization, allowing judges to request a preliminary expert analysis to assess whether the firm meets the minimum conditions for reorganization. Another significant change is the provision allowing firms to request an early stay period, which suspends debt enforcement actions before or around the processing of the reorganization request. Also, the reform allows creditors to propose a new reorganization plan

[1] Law 14,112/2020. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l14112.htm.

if the debtor's plan is rejected or if the statutory period expires without deliberation. Lastly, it extended the benefits of reorganization to sole proprietor farmers, including a special plan for micro and small firms if the farmer's debt falls below a certain threshold.

Lastly, in out-of-court reorganization, besides seeking to make it faster, the most recent changes aimed to relax the requirements for initiating the procedure and encourage greater use compared to its court-supervised counterpart. These changes included reducing the quorum of creditor consent required for judicial approval of the out-of-court reorganization plan. They allowed the submission of requests with a reduced quorum, along with a commitment to achieve the full quorum within a specified period. Additionally, the reform permitted the inclusion of labor claims in the plan, which were previously considered non-competitive in out-of-court reorganizations.

The results point to selective but meaningful changes in legal practice. First, the no-asset liquidation provision has been used both to close old proceedings and in cases filed after the reform. Liquidation closure rates also increased in the post-reform period, suggesting a stronger closure margin. At the same time, these results must be interpreted in light of the pandemic, the age composition of pending cases, and court capacity. The reform began with the pandemic already underway, and the remaining stock of active liquidation cases is still old. Thus, the liquidation evidence is promising, but not a simple story of uniformly faster cases: closures have increased, while duration and backlog remain central constraints.

Regarding out-of-court reorganization procedures, we find evidence of increased use relative to judicial reorganization. Data from the Brazilian Observatory of Out-of-Court Reorganization (*Observatório Brasileiro de Recuperação Extrajudicial*, OBRE) provide additional evidence of the increasing significance of this mechanism in managing debt. Nationally, the volume of debt negotiated through out-of-court reorganizations surged from R$ 7.06 billion in 2023 to R$ 12.27 billion by mid-August 2024, reflecting a substantial 74% increase. This remains a small part of the formal insolvency system, but it is consistent with the reform's goal of making a less court-intensive restructuring route more usable as the reformed legal framework becomes more established.

Finally, regarding reorganization procedures, implementation is clearest for instruments that can be observed in judicial decisions. In the case of tax debt, we observe an increase in citations to tax compliance certificates after the introduction of new tax-settlement and installment alternatives and as the effects of the pandemic waned. We interpret this as evidence that judges and tax authorities increasingly treat these certificates as procedurally relevant for reorganization. Moreover, the Superior Court of Justice recently changed its understanding, now allowing enforcement of the requirement for such proof. Citations to the offer in compromise (*transação tributária*) quickly surpassed those of installment plans, indicating that tax settlement became the more salient tool in practice. In the case of debtor-in-possession financing, mentions of the relevant provisions increased but remain small and concentrated among firms with larger debts. Preliminary examination has become an important procedural tool. Early-stay requests remain limited, but the observed cases suggest a nuanced pattern: the instrument initially appeared in unusually large and complex cases and later moved closer to

the average active reorganization. Finally, only one case in the data referred to the use of a creditor-proposed plan.

Analyzing the aggregate data, we do not observe a clear differential post-reform shift in reorganization filings and acceptances across firm-size categories. We do not have evidence for plan confirmations, since these data are available only at the aggregate level, but we argue that the same is likely to hold across firm-size categories. This suggests that the reform has not yet produced a broad transformation in observable filing patterns or final plan outcomes by firm size. The agricultural sector is different. After the reform clarified access to reorganization for sole proprietor farmers, filings by rural producers increased sharply and acceptance rates stabilized, suggesting that the legal clarification changed the practical availability of the procedure for this group.

This paper is organized as follows. In Section 2, we discuss the main modifications prescribed for each of the three bankruptcy procedures – liquidation, out-of-court reorganization, and judicial reorganization – and their primary motivations, while the Appendix provides the detailed legal background. In Section 3, we set out the economic mechanisms through which these legal changes can affect credit markets, firm behavior, and resource allocation. In Section 4, we describe the data sources for our main analyses, and in Section 5, we present our primary results. Section 6 provides Serasa's aggregate data and additional analyses on the changes affecting sole proprietor farmers and differentiating by firm size. Finally, Section 7 concludes the paper.

2. Changes introduced by the 2020 reform

This section summarizes the legal changes most relevant to the mechanisms examined in Section 3 and to the empirical outcomes analyzed below. Law 14,112/2020 did not replace the 2005 Bankruptcy Law. Instead, it amended liquidation, judicial reorganization, and out-of-court reorganization procedures in an attempt to reduce delay, strengthen recovery incentives, improve the screening of distressed firms, and make restructuring tools more usable in practice. The discussion below is intentionally selective. It highlights what changed relative to the pre-reform regime and why each group of changes matters for the outcomes we measure, while the Appendix preserves the detailed legal background, including the article-by-article discussion and jurisprudential developments.

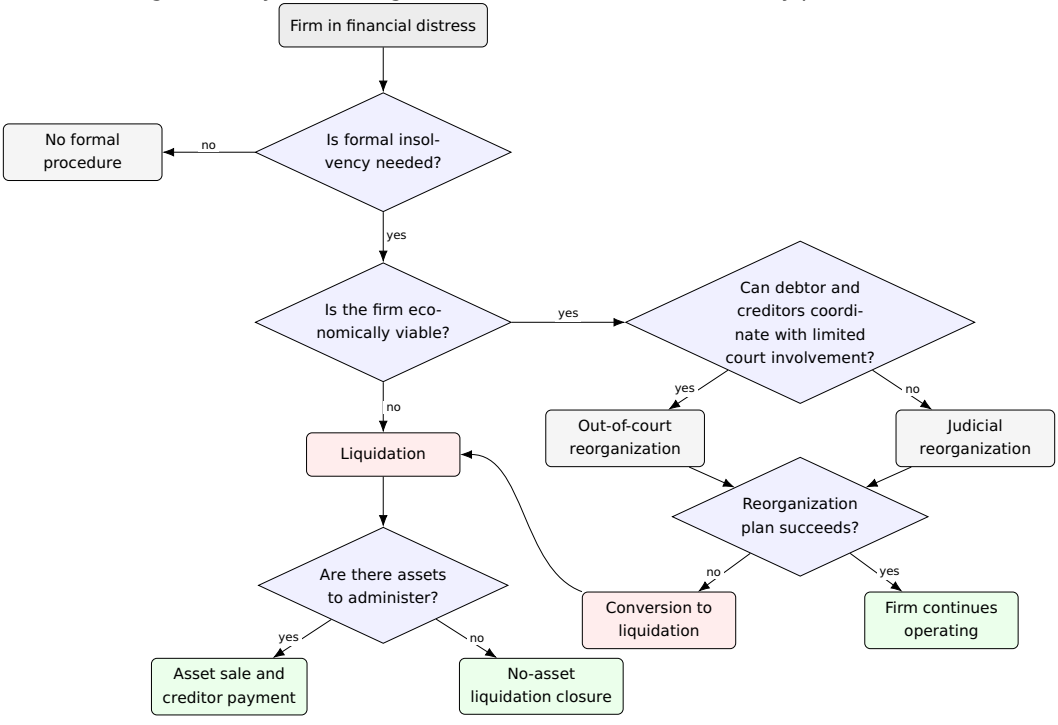
Figure 1 presents a high level view of the procedural choices available to firms and judges to resolve insolvency according to the Brazilian bankruptcy law. It also represents how legislators intended the law to work and helps understanding the problems the reform tried to solve and how it did it. A firm in financial distress should only seek court supervision if it was needed: courts should not spend time and resources to solve an issue when a private workout could do. If courts were indeed required, then an economically nonviable firm should be liquidated. Before the reform there was only one path: its assets would be evaluated and sold by a trustee and the revenue would be used to pay the creditors, which would lead to the case closure. While the case was open, creditors could make many objections to decisions and documents presented by either the firm or the trustee and demand payments even when there were no assets

to sell. The novelty that will be explained in Section 2.1 is the possibility of bypassing these issues when there are no assets to administer and then promptly closing the case.

An economically viable firm, on the other hand, should be recovered and the debtor and its creditors should reach an agreement on how. At this point a private workout had already failed but if court involvement could still be limited, the out-of-court reorganization would be the ideal path. In this procedure, the debtor would reach an agreement only with the most important creditors. A judge would then homologate the resulting reorganization plan and enforce it upon the other creditors. Were the debtor unable to reach such an agreement, the judicial reorganization would be the recommended path, with a court supervising the entire process, from the negotiations to the execution of the reorganization plan. Should it be successful, the case would close and the firm would continue operating. Should it fail, however, this would signal the firm was actually nonviable and the case should then be converted into liquidation. This failure state should be the exception, however, since it means, in the worst case, that the insolvency procedure failed to properly screen the distressed firm. At best, on the other hand, the firm could have suffered a shock while still reorganizing and suddenly became unable to recover.

The 2020 reform, then, kept the law's structure while modifying its instruments to better steer the distressed firms through these paths.

Figure 1. Stylized timing of financial distress and insolvency procedures



Notes: This figure provides a simplified map of the economic and procedural choices faced by courts and distressed firms.

2.1 *Liquidation*

For liquidation, the pre-reform problem was not only that cases could take a long time to close, but that slow and costly liquidation could keep nonviable firms and their assets trapped in court. The reform therefore sought to make liquidation faster and less wasteful. It amended Article 75 to emphasize prompt liquidation of nonviable firms, preservation and optimization of asset value, and the debtor's faster return to economic activity. The most important innovation for our empirical analysis is Article 114-A, which allows the closure of cases when no assets are found or when available assets are insufficient to cover procedural costs. The reform also changed rules on asset sales and on conversion from reorganization to liquidation. These provisions are connected to the empirical measures of no-asset liquidation, closed cases, duration, and backlog.

Before the reform, liquidation could remain open even when there were no meaningful assets to sell, and the debtor's obligations could persist long after the proceeding had ceased to serve a clear allocative function. This made liquidation unattractive for debtors, weak for creditors, and a poor outside option in reorganization bargaining. The 2020 reform addressed this problem at different stages of the procedure. At the beginning of liquidation, it clarified the system's objective of removing unviable firms from the market and returning assets and entrepreneurs to productive activity. During liquidation, it introduced rules intended to accelerate asset sales and reduce procedural obstacles to sale. At the end of the procedure, Article 114-A made it possible to close cases with no assets or insufficient assets to cover procedural costs, while other provisions shortened the period during which the debtor remains burdened by unpaid obligations. These changes make liquidation outcomes central to our empirical analysis: if the reform is being implemented, we should observe greater use of no-asset liquidation, more closures, and, over time, lower stocks of old pending cases.

2.2 *Out-of-court reorganization*

For out-of-court reorganization, the pre-reform regime allowed a formal restructuring agreement outside the full judicial reorganization procedure, but its use remained limited by a high creditor-consent threshold and a narrower set of eligible claims. The 2020 reform aimed to reduce the cost for debtors and creditors to coordinate and make this route a more viable alternative to judicial reorganization. It reduced the creditor-consent threshold required for approval, allowed debtors to file with lower initial support while seeking the remaining adhesions within the statutory period, and expanded the set of claims that can be included. These changes motivate the empirical analysis of out-of-court reorganization filings as a share of total reorganization filings in São Paulo and across Brazil.

The key pre-reform limitation was that the procedure existed but was hard to use in precisely the situations where coordination was costly. A debtor seeking approval of an out-of-court plan needed a high level of creditor support before filing, and important categories of claims were either excluded or difficult to incorporate. The reform lowered these entry barriers. It reduced the approval quorum from more than three-fifths to more than half of the affected credits, allowed filing with one-third support while the

debtor seeks the remaining adhesions within the statutory period, modernized notice requirements, and permitted the inclusion of labor claims subject to prior union negotiation. These changes do not eliminate the need for judicial approval, but they make out-of-court reorganization closer to a practical middle route between purely private workouts and full judicial reorganization. For that reason, the empirical section examines whether the procedure became more visible after the reform and whether its use remains geographically and economically concentrated.

2.3 *Reorganization*

For judicial reorganization, the pre-reform regime already provided a court-supervised procedure for preserving viable firms, but several instruments remained either incomplete, uncertain, or underused in practice. The 2020 reform changed rules that operate through liquidity, screening, bargaining, and legal predictability. It expanded tax installment and settlement possibilities, strengthened the role of tax compliance certificates, and modified the priority rules for DIP financing and supplier credit. It also formalized preliminary examination, allowed requests for early stay, created space for creditor-proposed plans, and clarified access to reorganization for sole proprietor farmers. The empirical analysis therefore tracks mentions of tax instruments, DIP financing, preliminary examination, early stay, creditor-proposed plans, and sectoral patterns in agriculture.

The changes to judicial reorganization were more heterogeneous because the pre-reform problems were also more heterogeneous. On tax debt, the law formally required proof of tax compliance, but courts had long relaxed this requirement because distressed firms lacked adequate installment or settlement mechanisms. The reform expanded tax regularization tools and made non-compliance with agreed tax arrangements relevant for conversion into liquidation, which is why we track references to tax compliance certificates, installment plans, and tax transactions. On financing, the pre-reform framework offered limited certainty to new lenders and suppliers that continued to deal with the debtor during reorganization. The reform created clearer priority and collateral rules for DIP financing and partner creditors, so we examine whether these provisions appear in judicial practice and whether they are concentrated among larger-debt cases.

Other changes targeted information and bargaining rather than liquidity. Preliminary examination, already used by some courts before the reform, was formally incorporated into the law to allow judges to verify documentation, operating conditions, and possible misuse before deciding whether to grant reorganization. Early stay created forms of temporary protection before or around the processing decision, allowing the debtor to avoid immediate enforcement pressure while the case is organized. Creditor-proposed plans gave creditors an alternative after the debtor's plan fails, reducing the binary choice between accepting the debtor's plan and converting the case into liquidation. Finally, the reform clarified the access of sole proprietor farmers to reorganization and extended to some of them a simplified plan available to micro and small firms. These instruments motivate the paper's focus on observable mentions and patterns of use

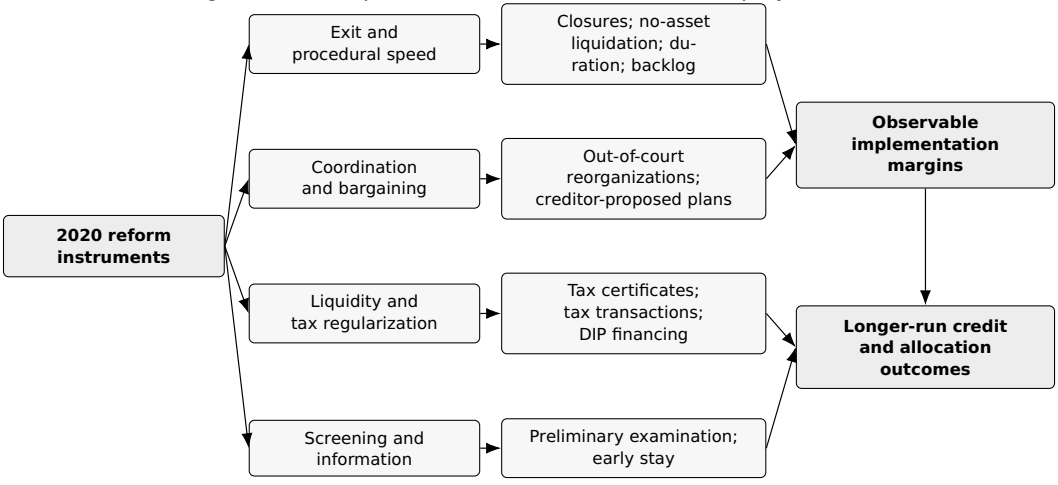
rather than on final causal effects, since several of them are recent, procedural, and still maturing.

3. Conceptual framework

The legal changes described in Section 2 are best understood as attempts to alter the way firms, creditors, and courts respond to financial distress. This section organizes those changes around the economic mechanisms that guide the empirical analysis. The point is not to develop a full structural model of insolvency, but to set out why each legal instrument should matter, what margin of behavior it is expected to affect, and which outcomes in the data can speak to that mechanism. The framework therefore plays two roles in the paper. First, it connects the legal discussion to the economic rationale of the reform. Second, it disciplines the empirical analysis by clarifying what our descriptive measures can and cannot show in the first years of implementation.

Figure 2 provides the organizing logic. The reform operates through procedural instruments that may affect four broad channels: exit and procedural speed, coordination and bargaining, liquidity and tax regularization, and screening and information. These channels are expected to affect observable implementation margins before they translate into broader economic outcomes. This distinction is central to our empirical approach. Some of the reform's expected effects, such as credit supply, investment, recovery rates, and resource reallocation, are long-run outcomes that we cannot directly estimate with the data currently available. Our evidence is therefore about implementation margins: whether the new or modified instruments appear in judicial practice, whether procedures are being closed or redirected differently, and whether observable use is concentrated in the types of cases for which the mechanism is most relevant.

Figure 2. Conceptual channels of the 2020 bankruptcy reform



Notes: This figure summarizes the channels through which the reform may affect insolvency outcomes. The empirical analysis focuses on observable implementation margins, such as closures, references to legal instruments, duration, backlog, and filing patterns. Broader effects on credit, investment, productivity, or resource allocation are conceptually relevant but are not causally estimated in this paper.

Table 1 then translates this general framework into the specific legal instruments and empirical proxies used in the paper. It shows how each reform instrument maps into an economic mechanism and into the descriptive outcomes we observe.

Table 1. Conceptual map: legal instruments, mechanisms, and empirical proxies

Legal instrument in the 2020 reform	Economic mechanism	Expected implementation margin	Empirical proxy in this paper
No-asset liquidation; faster asset sales; broader conversion into liquidation	Faster and less costly exit	More closures, especially of old or assetless cases; lower backlog over time	Closed liquidations; no-asset liquidation mentions; duration; active liquidation stock; court congestion
Liquidation rules that reduce delay and preserve asset value	More credible liquidation outside option	Liquidation becomes a more credible fallback in reorganization bargaining	Closure rates and duration; no-asset liquidation mentions; firm-size evidence on reorganization versus liquidation filings
Reduced quorum and broader scope for out-of-court reorganization	Lower coordination and court-involvement costs	Greater use of a less court-intensive restructuring route	Share of out-of-court reorganizations among all reorganization filings; state-level diffusion
Tax installment and transaction tools; DIP-financing rules	Going-concern preservation and liquidity	Tax regularization and new financing become more operational in reorganization	Mentions of tax certificates, installment plans, tax transaction, and partner creditors/DIP-related benefits
Preliminary examination before granting reorganization	Screening and procedural information	More observable screening of documentation, activity, and potential abuse	Mentions of Article 51-A, *constatação prévia*, *perícia prévia*, and court-level adoption
Early stay; creditor-proposed plans	Timing of protection and bargaining	Protection may be requested before full processing; creditors gain an alternative to liquidation after plan failure	Early-stay requests and case complexity; mentions and observed use of creditor-proposed plans

Notes: This table provides a conceptual mapping from the legal instruments introduced or modified by the 2020 reform to their expected economic mechanisms, implementation margins, and empirical proxies. DIP denotes debtor-in-possession financing. The mappings are descriptive and do not constitute causal estimates.

Insolvency and restructuring institutions play a central role in modern economies because they govern the allocation of control and the redeployment of resources when firms become financially distressed. While bankruptcy statutes are often viewed as "back-end" legal arrangements, their economic relevance is fundamentally *ex ante*: creditor expectations about recovery rates, the predictability of enforcement, and the time to resolution shape credit supply, contract terms, and ultimately investment and productivity. A broad body of evidence in the law-and-finance tradition links stronger

legal protection and enforcement to deeper financial markets and lower financing frictions (La Porta et al., 1997). Yet formal creditor rights are not sufficient: how courts and enforcement systems operate in practice, especially their speed and reliability, critically determines whether statutory rules translate into economic outcomes (Djankov et al., 2003; Jappelli et al., 2005). These considerations are particularly salient for insolvency regimes because time and uncertainty are first-order determinants of value in distress.

From a welfare perspective, the canonical objective of an insolvency system is to minimize deadweight losses by (i) preserving going-concern value for firms with positive continuation value, and (ii) liquidating nonviable firms promptly so that assets, labor, and managerial attention can be reallocated to more productive uses (Hart, 2000). Achieving this objective is difficult because distress resolution involves both informational frictions, as viability is imperfectly observed and future cash flows are uncertain, and coordination frictions, as multiple claimants have heterogeneous priorities and incentives. These frictions can generate bargaining delays, strategic behavior, and disputes over control. Even acknowledging these challenges, however, procedural inefficiency, most notably excessive duration and high administrative costs, can impose substantial economic costs because it erodes asset values, weakens discipline, and distorts the bargaining environment in which reorganizations and liquidations unfold.

One central channel is the direct effect of time on recovery values. Delay reduces the present value of recoveries mechanically through discounting and indirectly through deterioration of both tangible and intangible assets. Physical capital depreciates, inventories lose value, receivables become harder to collect, and assets can become technologically obsolete while proceedings remain unresolved. Importantly, prolonged distress also destroys organizational and relational capital: suppliers may tighten terms, customers may switch, key employees may leave, and coordination within the firm may collapse. These dynamics are amplified when assets must be sold in illiquid conditions or when prospective buyers anticipate procedural frictions and thus bid conservatively. Theoretical and empirical work highlights that liquidation values depend on market liquidity and the ability to conduct sales in an orderly manner; fire-sale conditions depress proceeds and can magnify losses (Shleifer and Vishny, 1992; Strömberg, 2000). This channel is directly related to the reform's liquidation provisions: if no-asset liquidation and faster asset-sale rules reduce the time cases spend in court, they can raise effective recoveries and reduce the stock of unproductive pending cases. Conversely, faster liquidation and timely reorganizations can increase effective recoveries even if formal priority rules remain unchanged.

A second channel is the impact of procedural inefficiency on firm behavior during distress. Firms facing prolonged insolvency proceedings often operate under severe constraints and uncertainty. Management attention shifts from production and investment toward legal disputes and negotiations. Projects may be postponed or abandoned, maintenance and hiring may be cut, and profitable relationships can be disrupted. These "limbo costs" are economically meaningful even when a firm eventually reorganizes, because value destruction occurs during the period in which the firm cannot operate and invest normally. Moreover, slow exit of nonviable firms can contribute to misallocation by keeping low-productivity capacity in place and slowing the redeployment of capital and labor.

A third channel operates through credit markets and financial contracting. Credit supply and pricing reflect expected payoffs in default states, which depend jointly on statutory protections, enforcement quality, and the time to resolution. When insolvency outcomes are slow or unpredictable, the expected present value of recovery declines and the variance of outcomes increases; lenders respond by tightening credit, shortening maturities, demanding additional collateral, or charging higher spreads (Jappelli et al., 2005). These mechanisms connect insolvency performance to broader patterns documented in the law-and-finance literature: weak legal environments constrain external finance and raise financing frictions (La Porta et al., 1997). Importantly, the relevant object for lenders is not simply the mean recovery rate but also procedural duration and uncertainty. A regime that produces similar nominal recoveries but does so only after long delays can imply materially lower effective recoveries in present value terms, and therefore a higher cost of capital. This logic also extends beyond banks to trade credit and other forms of short-term financing that rely on predictable enforcement.

Because insolvency procedures operate through courts and administrators, judicial capacity and congestion are key determinants of effectiveness. Even well-designed statutes may fail to deliver their intended benefits if courts are slow, overloaded, or inconsistent. Evidence from Brazil's 2005 bankruptcy reform illustrates this complementarity: Ponticelli and Alencar (2016) show that improvements in credit access, investment, and productivity associated with the reform were substantially weaker in jurisdictions with higher court congestion, indicating that enforcement frictions can blunt statutory change. Related evidence from the United States shows that crowded bankruptcy courts prolong Chapter 11 proceedings and that congestion can raise the cost of credit by reducing expected recovery and increasing uncertainty (Iverson, 2018; Müller, 2022). Direct evidence from bankruptcy cases in São Paulo points in the same direction: firms assigned to more congested courts spend longer in court, are less likely to be liquidated, and renegotiate debt more deeply, consistent with congestion weakening creditors' expected liquidation outside option (Araujo et al., 2024). Together, these findings emphasize that insolvency policy and court performance interact: reforms that aim to improve insolvency outcomes are more likely to translate into economic benefits when procedural bottlenecks are reduced and cases can be processed in a timely manner.

Procedural inefficiency in liquidation can also distort reorganizations by weakening the outside option that disciplines bargaining. In many models of restructuring, bargaining outcomes depend on what happens if negotiations fail; liquidation values and liquidation timing therefore shape creditor threats and the allocation of surplus. When liquidation is slow, costly, or yields low effective recoveries, liquidation becomes a less credible threat point, shifting bargaining power and potentially prolonging negotiations. Empirical evidence shows that higher liquidation values strengthen creditor positions and affect renegotiation outcomes, consistent with bargaining models in which enforcement is disciplined by credible outside options (Benmelech and Bergman, 2008). Evidence from congested Brazilian bankruptcy courts also suggests that delays in liquidation can shift reorganization outcomes by reducing expected liquidation values and

weakening creditors' bargaining position (Araujo et al., 2024). When liquidation is ineffective, creditors may rationally avoid initiating formal bankruptcy even when liquidation would be efficient, because expected net recoveries are too low after accounting for duration and costs. This can push distress resolution toward informal workouts "in the shadow of the law" or toward fragmented enforcement actions that are more distortive and can further erode value. This is why the empirical analysis does not treat liquidation outcomes as isolated from reorganization. Faster closure of assetless or old liquidation proceedings matters both as a direct measure of exit efficiency and as an indirect indicator of whether liquidation may become a more credible fallback for bargaining in reorganization.

Liquidity provision during distress is another key friction linking insolvency institutions to real outcomes. Even firms with positive continuation value may fail if they cannot finance operations while negotiating a restructuring. Existing creditors may be reluctant to lend additional funds, and new financiers may fear dilution or legal challenges. Many insolvency systems therefore adopt mechanisms that facilitate post-filing financing, often through priority rules or enhanced collateral, to prevent inefficient liquidation and preserve going-concern value. The economic logic is that improving access to bridge financing can reduce fire sales and allow viable firms to continue operating while a plan is negotiated (Hart, 2000). In the Brazilian reform, this channel appears not only in the DIP-financing provisions, but also in the new tax installment and transaction rules. Tax debt can prevent the approval of reorganization or create enforcement pressure during the proceeding; making tax regularization more feasible can therefore support going-concern preservation. At the same time, the effectiveness of financing and tax-regularization mechanisms depends on procedural speed and predictability. If proceedings are long, uncertain, or frequently litigated, financiers still bear substantial duration risk and uncertainty, and firms may still struggle to regularize tax liabilities in time. This reinforces the broader point that reforms to insolvency procedures and reforms to the tools available within those procedures are complements rather than substitutes.

Finally, out-of-court restructuring mechanisms can enhance efficiency by reducing the need for court involvement in cases where the primary problem is creditor coordination rather than complex disputes requiring judicial oversight. In principle, streamlined out-of-court frameworks can accelerate resolution, reduce administrative costs, and alleviate congestion externalities, allowing courts to focus on the subset of cases where judicial intervention adds the most value. From an economic perspective, providing a menu of resolution paths – informal renegotiation, out-of-court restructuring, judicial reorganization, and liquidation – can improve screening and matching: simpler cases can be resolved quickly, while more complex ones proceed through judicial channels. This is the mechanism behind the reform's reduction in approval quorum and expansion of the claims that may be included in out-of-court reorganization. Because bargaining and recoveries are highly sensitive to timing, the availability of faster procedures can affect both outcomes and the distribution of surplus, and can shape credit supply *ex ante*.

Three additional instruments operate mainly through information, timing, and bargaining. Preliminary examination can improve screening by allowing courts to verify

documentation, operating conditions, and signs of abusive filings before granting reorganization. This may reduce misuse of the procedure, but it can also increase the probability that viable filings are corrected rather than rejected for formal defects. Early stay, by contrast, operates through timing: it can preserve value by preventing a race to collect before the court has fully processed the reorganization request, but it may also create incentives for strategic delay if used too broadly. Creditor-proposed plans operate through bargaining power, giving creditors an alternative to the binary choice between accepting the debtor's plan and converting the case into liquidation. These instruments are harder to evaluate through final outcomes in the short run, so the empirical analysis focuses on observable use, concentration across courts, and the characteristics of cases in which they appear.

Taken together, the theory and evidence imply that making insolvency procedures faster, less costly, and more predictable can generate broad economic benefits, but only if statutory changes are translated into practice. Reducing duration and administrative frictions should raise the present value of recoveries and strengthen the contracting environment, improving credit market outcomes and lowering financing frictions (La Porta et al., 1997; Jappelli et al., 2005). Improving liquidation effectiveness can increase liquidation values and restore discipline in renegotiation by strengthening outside options (Shleifer and Vishny, 1992; Benmelech and Bergman, 2008; Araujo et al., 2024). Enhancing the functioning of reorganization and the tools available within it can preserve going-concern value for viable firms (Hart, 2000), though the extent to which such tools translate into real outcomes depends on judicial capacity and procedural performance (Djankov et al., 2003; Ponticelli and Alencar, 2016; Iverson, 2018; Müller, 2022; Araujo et al., 2024). These mechanisms provide an economic rationale for reforms aimed at improving insolvency efficiency and predictability, and they clarify why the macroeconomic relevance of insolvency reform extends beyond the subset of firms that enter formal proceedings: by shaping enforcement expectations and bargaining dynamics, insolvency institutions affect the allocation of credit and resources throughout the economy.

The empirical analysis follows the structure in Figure 2 and the mapping in Table 1. The liquidation results examine whether no-asset liquidation and related changes are associated with more closures, changes in duration, lower backlog, and a more credible liquidation outside option. The out-of-court reorganization results examine whether lower coordination costs are associated with greater use of a less court-intensive restructuring route. The reorganization results examine whether tax instruments, DIP financing, preliminary examination, early stay, and creditor-proposed plans are being incorporated into judicial practice in ways consistent with the mechanisms above. Finally, the firm-size and sector analyses ask whether these channels appear differently across firms for which liquidation, reorganization, and legal eligibility may have different economic value.

4. Data

To analyze the evidence about the implementation of the changes discussed in Section 2 in the first years of the 2020 bankruptcy law reform, we use four main data sources,

complemented by a small number of auxiliary sources used only for specific contextual comparisons.

The primary source of data used in this paper comes from Tribunal de Justiça de São Paulo (TJSP), which stores information about all judicial cases under the responsibility of the courts in the state of São Paulo, including updates since the filing date. We received from TJSP a list of bankruptcy filings in that state beginning in January 2005 and manually extracted registration information, such as firm name, claimant, judicial district, court, procedure type, and filing date. We also extracted case updates and judges' decisions available in the docket. From the text of these decisions, we are able to track parts of the timeline of the procedures and identify observable mentions of legal instruments. In particular, by looking for a set of regular expressions, we identify liquidation cases that ended, references to no-asset liquidation, tax compliance certificates, tax settlement instruments, DIP-financing-related provisions, preliminary examination, early stay, and other procedural events discussed in Section 5. These variables should be interpreted as text-based proxies for judicial practice: they capture what is observable in docket text and do not always measure the final legal outcome or actual economic use of an instrument.

Table 2 and Figure 3 summarize the annual distribution of TJSP bankruptcy filings by procedure type. They provide the descriptive baseline for the empirical analysis below, which then examines whether the post-reform period changed the use, duration, and procedural outcomes associated with each route. We place these summary statistics in the data section because they describe the empirical universe before the paper turns to mechanism-specific outcomes.

Table 2. Bankruptcy filings by year and procedure type

Year	Liquidations	Judicial reorganizations	Out-of-court reorgs.	Total
2005	384	19	0	403
2006	362	33	5	400
2007	362	29	1	392
2008	1 241	111	6	1 358
2009	1 478	172	8	1 658
2010	1 236	129	4	1 369
2011	1 178	141	4	1 323
2012	1 301	191	1	1 493
2013	1 097	189	1	1 287
2014	1 081	209	1	1 291
2015	1 186	248	1	1 435
2016	1 183	322	7	1 512
2017	1 288	344	4	1 636
2018	1 092	325	5	1 422
2019	928	408	7	1 343
2020	762	398	9	1 169
2021	724	322	14	1 060
2022	551	195	16	762
2023	774	359	19	1 152
2024	697	249	48	994
2025	573	235	27	835
2026	45	12	0	57

Notes: This table reports the number of new bankruptcy cases filed each year in the state of São Paulo, by procedure type, using the TJSP case-level data. The categories are liquidation, judicial reorganization, and out-of-court reorganization. The last column reports the annual total across all three procedures and is used as the baseline descriptive count for the empirical analysis. The 2026 filing year is partial in the current dataset and should not be read as a full-year total.

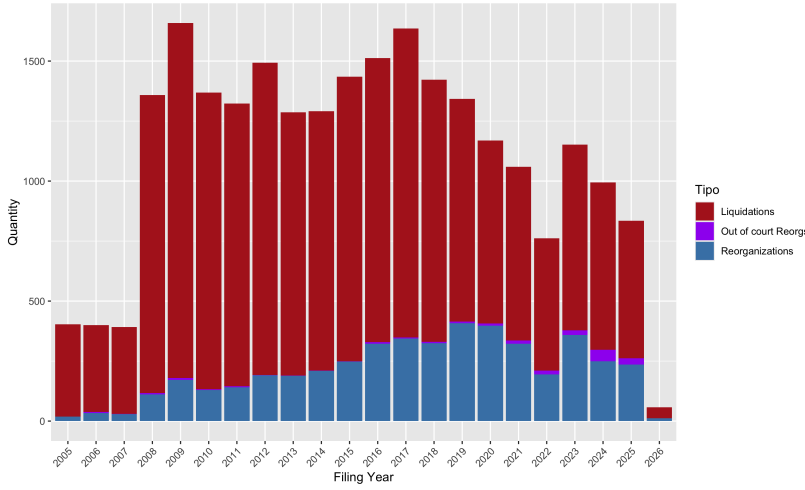


Figure 3. Bankruptcy filings by year and procedure type

Notes: This figure reports the number of new bankruptcy cases filed each year in the state of São Paulo, by procedure type. The series distinguish liquidation, judicial reorganization, and out-of-court reorganization cases in the TJSP data. The 2026 filing year is partial in the current dataset, so the last bar should not be read as a full-year total.

The second and third sources of data are the *Justiça em Números* statistics panel and the *Módulo de Produtividade Mensal*, two publicly available panels containing data from Conselho Nacional de Justiça (CNJ). The *Justiça em Números* statistics panel contains data from cases and courts for the entire country since 2020, while the *Módulo de Produtividade Mensal* covers court data from 2015 to 2019. We extracted yearly information on judicial reorganization and out-of-court reorganization requests for all states of Brazil. We also use CNJ court-performance indicators to describe the institutional context of São Paulo bankruptcy courts, including the Demand Fulfillment Index (IAD) and the net congestion rate. These CNJ series complement the TJSP microdata by allowing us to compare São Paulo to other states and to relate observed procedural outcomes to court capacity.

The fourth source is the Economic Indicators dataset (*Indicadores Econômicos*) from Serasa Experian. We use these aggregate bankruptcy data to investigate the evolution of filings, acceptances, and plan confirmations by firm size and sector, focusing on small firms and sole proprietor farmers[2], the latter having received specific regulations following the reform. Although the data for plan confirmations cannot be disaggregated on any of these dimensions, we discuss the subject based on other findings in this work. The dataset spans from January 1991 to January 2024 with a monthly frequency. From January 1991 to May 2008, it includes the number of *concordata* filings and acceptances. The newer reorganization procedure is included from June 2005 onward, with data on filings, acceptances, and confirmation of plans (*homologação dos planos de recuperação*). Liquidation filings and acceptances are available for the entire series. Starting in 2005, the data is also categorized by firm size and sector separately. However, there

[2] In Portuguese: *agricultores que exercem a atividade rural como pessoa física*

is no data available that simultaneously categorizes by firm size and sector, and the aggregate structure does not allow us to follow individual cases over time.

Finally, two auxiliary sources are used for specific purposes rather than as part of the main empirical dataset. We use information from the Brazilian Observatory of Out-of-Court Reorganization (*Observatório Brasileiro de Recuperação Extrajudicial*, OBRE) to provide external context on the volume of debt negotiated through out-of-court reorganizations. We also use U.S. Trustee Program data to provide a comparative benchmark for small-business Chapter 11 outcomes under Subchapter V. These auxiliary sources are introduced in the corresponding empirical discussions and are not used to construct the main TJSP, CNJ, or Serasa series.

5. Empirical analysis

In this section, exploring the judicial data described in the previous section, we investigate empirical evidence on the implementation of the changes brought by the 2020 reform. The analysis follows the conceptual framework in Section 3 and the mechanism-to-proxy map in Table 1. Most measures below are descriptive implementation proxies constructed from docket information: they indicate whether a legal instrument appears in the observable record, whether cases are active or closed, and how case characteristics differ across groups. They should not be interpreted as causal estimates of the reform's effects. We first examine liquidation outcomes, where the relevant mechanisms are duration, backlog, asset-value preservation, and the credibility of liquidation as an outside option. We then examine out-of-court reorganizations, where the mechanism is the reduction of creditor-coordination and court-involvement costs. Finally, we examine judicial reorganizations, focusing on tax debt, DIP financing, preliminary examination, early stay, and creditor-proposed plans as instruments that may affect liquidity, screening, bargaining, and going-concern preservation.

5.1 *Liquidations*

In this section we analyze the evidence we find in the data about the implementation of the changes brought by the new law to liquidation cases. This is the empirical counterpart to the liquidation channel in Section 3: if liquidation becomes faster and less costly, it can reduce value destruction, help close non-productive cases, and improve the outside option that disciplines reorganization bargaining. We distinguish four related outcomes. First, a closed liquidation is a case for which the docket contains an entry or judicial decision indicating that the liquidation proceeding was closed. Second, a no-asset liquidation is a closed case whose closure-related entry or decision mentions Article 114-A or related language, such as *"falência frustrada"*, indicating that the case was closed because available assets were absent or insufficient to cover procedural costs. Third, closed-case duration is measured as elapsed time between filing and observed closure for cases that are observed as closed. Finally, active cases and average active-case length describe the remaining stock of pending liquidation proceedings and their elapsed time since filing. We first analyze the use of the new provision of "no-asset

liquidation" that institutionalized the possibility of closing a liquidation procedure when there are not enough assets to pay the case's costs. For that, the first step was to identify closed cases by looking in the data for docket entries or judges' decisions indicating closure, including expressions such as "*Declaro a falência encerrada*" ("I declare the liquidation closed"). The next step was to look into those closure-related texts for citations of either *"falência frustrada"* or article 114-A.

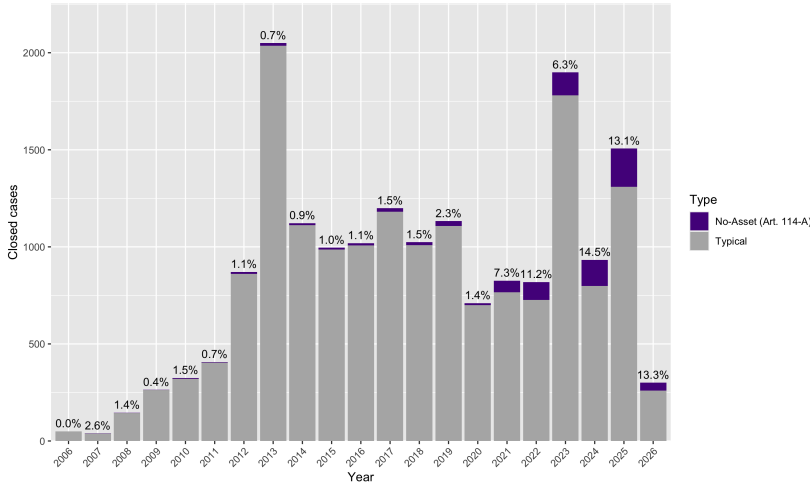


Figure 4. Closed liquidation cases by year and no-asset liquidation mentions

Notes: This figure reports the number of liquidation cases closed each year in the TJSP data and the share of those closures mentioning the no-asset liquidation provision. The horizontal axis is the year of observed closure, not the filing year. Closed cases are identified from docket entries or equivalent judicial decisions indicating closure. No-asset liquidation mentions are identified from references to Article 114-A or related language in the closure-related text, so the series captures observable judicial use of the instrument rather than every economically assetless case. The 2026 observation is partial in the current dataset and should not be read as a full-year total.

Figure 4 shows closed liquidation cases by year and identifies the share of cases closed with mentions of no-asset liquidation. Although not explicitly specified in the law before the reform, the instrument was already in use by some judges in the state of São Paulo. After the reform, the updated series continues to indicate relevant implementation of Article 114-A, but not a monotonic post-reform increase. The annual pattern should be read together with the partial 2026 observation and the changing age composition of closed cases.

Figure 5 shows, per filing year, the number of cases closed after the reform using the instrument of "no-asset liquidation". The figure shows that many of these closures involve cases filed well before the reform, indicating that the instrument has been used to close old and long-lasting proceedings. At the same time, the post-reform filing cohorts also appear in the data, so the evidence should be read as a combination of two margins: cleaning up old cases and applying the new rule to newer filings. This is important because a large number of post-reform closures does not necessarily mean that newly

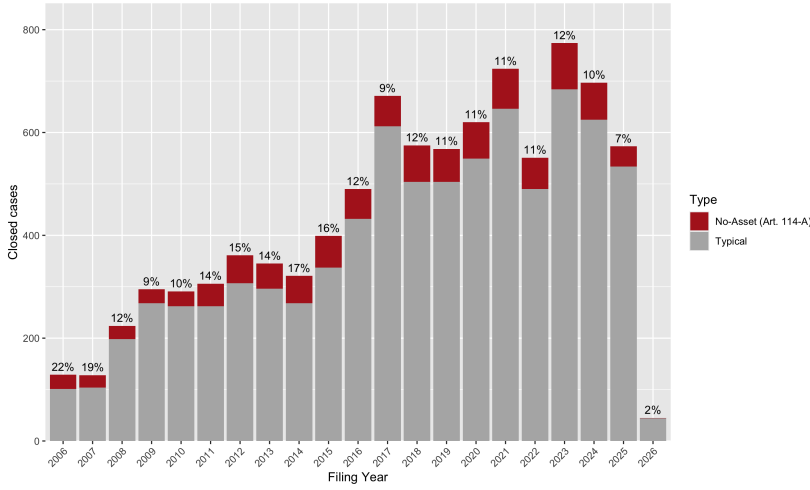


Figure 5. Post-reform no-asset liquidation closures by filing year

Notes: This figure reports liquidation cases closed after the 2020 reform that mention the no-asset liquidation provision, grouped by filing year. The bars show how post-reform closures are distributed across older and newer filing cohorts. Because the horizontal axis refers to filing year rather than closure year, the figure helps distinguish backlog clean-up from use of the instrument in cases filed after the reform. The 2026 filing year is partial in the current dataset and should not be read as a full-year cohort.

Table 3. Mentions of no-asset liquidation in closed cases after the reform

Filing cohort	Closed cases	Share mentioning no-asset liquidation (%)
Filed before the reform	4 124	12.71
Filed after the reform	2 114	5.44

Notes: This table reports liquidation cases observed as closed after the 2020 reform, separated by whether the case was filed before or after the reform came into effect. The percentages report the share of closed cases in each group whose terminating decision mentions Article 114-A or related no-asset liquidation language. The table therefore distinguishes the use of the new provision to close inherited backlog from its use in cases filed under the post-reform regime.

filed liquidations are already ending quickly; part of the effect reflects the resolution of inherited backlog.

Table 3 considers a different view of the implementation of the instrument of “no-asset liquidation”: for the cases closed after the reform, it shows the total number of those that were filed before and after the reform, as well as the share that used the instrument in both groups. The share is higher among cases filed before the reform, 12.71% of those 4 124 closed cases, than among cases filed after the reform, 5.44% of those 2 114 closed cases. Compared to Figure 4, these shares represent a weighted average of the annual shares during the post-reform period, grouped based on whether the case was filed before or after the implementation of the reform. This corroborates the idea that the institute has been especially relevant for closing old cases, even though it is also used for post-reform cohorts.

A second indicator that we analyze is the number of liquidations closed. One of the intended effects with the instrument of “no-asset liquidation” was to increase this number. Figure 4 shows that the number of liquidations closed fell in 2020 but started

rising again from 2021 and onward, with a particularly large number of closures in the post-reform period. Restricting the analysis to comparable periods before and after the reform and also considering active cases, Table 4 points in the same direction: it shows that the proportion of closed liquidations among all active liquidation cases is statistically higher during the post-reform period than during the pre-reform period[3]. This evidence is consistent with a stronger closure margin after the reform, although it should be interpreted together with changes in court operation during and after the pandemic. When the COVID-19 pandemic hit the country in 2020, not only courts had to adapt to the social distancing norms but the National Council of Justice edited many decisions extending cases deadlines and recommending that judges focused on reorganization cases during the health emergency period, only revoking them in November 2022[4].

This may have delayed some decisions from judges regarding liquidation cases, including the decision to close them, while also contributing to a later concentration of closures once court activity normalized. The evolution of active liquidations in Figure 9, together with the congestion indicators in Figure 10, suggests that the closure margin improved in a still-congested system. Therefore, we cannot separate the effects of the pandemic and all adaptation measures of the judiciary from those of the reform concerning the closure of liquidation cases in the initial post-reform period.

Table 4. Difference test in liquidation closure rates before and after the 2020 reform

Before	After	Difference	χ^2	p-value
0.436	0.610	0.174	671.809	< 0.001

Notes: This table compares the proportion of liquidation cases observed as closed before and after the 2020 reform, using symmetric windows around the reform date. The pre-reform window runs from 5 October 2015 to 24 January 2021, and the post-reform window runs from 25 January 2021 to 17 May 2026. The test is descriptive and should be interpreted together with the figures on backlog, case age, and court congestion, since closure rates may also reflect pandemic-era court operation and the age composition of pending cases.

Figures 6, 7, and 8 provide complementary evidence on liquidation timing. They show, respectively, how closure duration varies by filing cohort, the full distribution of closed-case duration, and the share of liquidation cases from each filing cohort that had already concluded by the latest data collection. Figure 7 shows that closed liquidations remain slow on average, with an average duration of 4.8 years and a long right tail. Figure 6 shows that recent filing cohorts naturally contain a larger share of cases closed within 12 or 24 months, but also a mechanically larger share of cases not yet closed. Figure 8 reinforces this censoring problem: older cohorts have much higher observed conclusion rates than recent cohorts simply because they have had more time to close. These figures are therefore important for interpreting the post-reform closure patterns because changes in closure rates may reflect both reform implementation and the age composition of pending cases.

Figure 9 shows that the stock of active liquidations has declined substantially after its earlier peak, while the average length of the remaining active cases has continued

[3] The pre-reform window runs from 5 October 2015 to 24 January 2021, and the post-reform window runs from 25 January 2021 to 17 May 2026.

[4] CNJ Guidance No. 63 and Resolutions No. 313, No. 314, No. 318, No. 322, No. 397 and No. 481

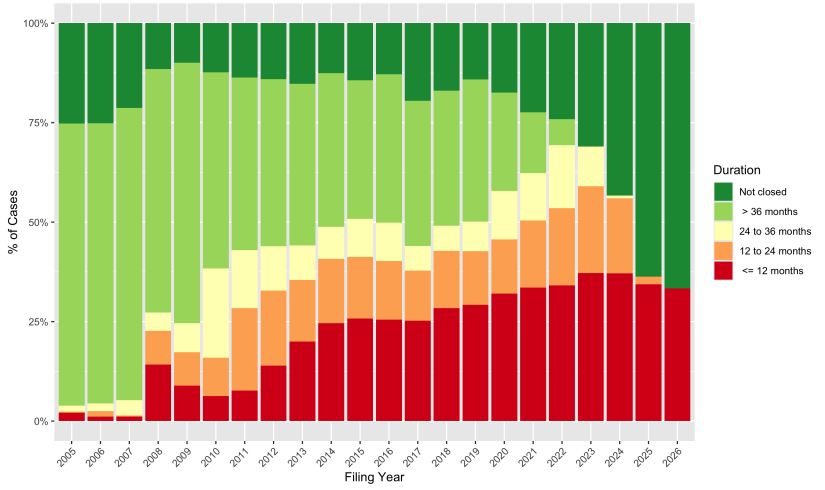


Figure 6. Duration of closed liquidation cases by filing year

Notes: This figure reports the duration of closed liquidation cases by filing year in the TJSP data. Duration is measured as elapsed time between filing and observed closure. Recent filing cohorts are mechanically more likely to contain short completed cases and many cases that remain open, so comparisons across cohorts should be interpreted together with the closure-rate evidence. The 2026 filing year is partial in the current dataset and should not be read as a full-year cohort.

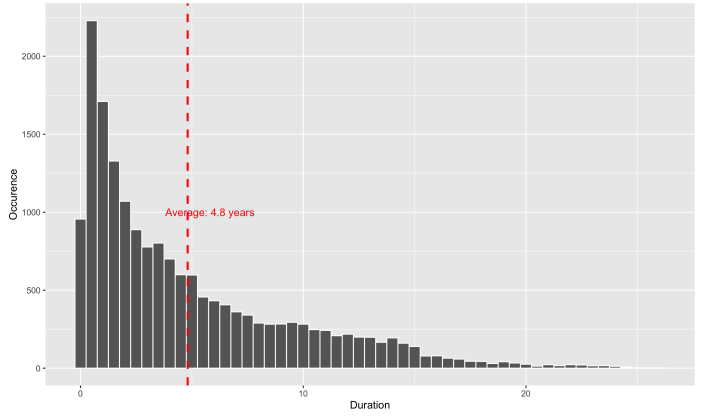


Figure 7. Distribution of closed liquidation durations

Notes: This figure reports the distribution of durations among liquidation cases observed as closed in the TJSP data. Duration is measured from filing to closure. The figure summarizes the realized length of completed cases only; it does not include cases that are still active and therefore understates the eventual duration of more recent cohorts.

to rise. This means that closures have reduced the stock, but the cases still pending are increasingly old. Figure 10 adds the institutional context: the Demand Fulfillment Index of São Paulo bankruptcy courts fell close to 100% in 2020 and 2021, while net congestion rose again to 73.7% in 2021. These indicators suggest that the reform has operated in courts with limited spare capacity, which helps explain why improvements in closure margins may coexist with a still-aging stock of pending cases.

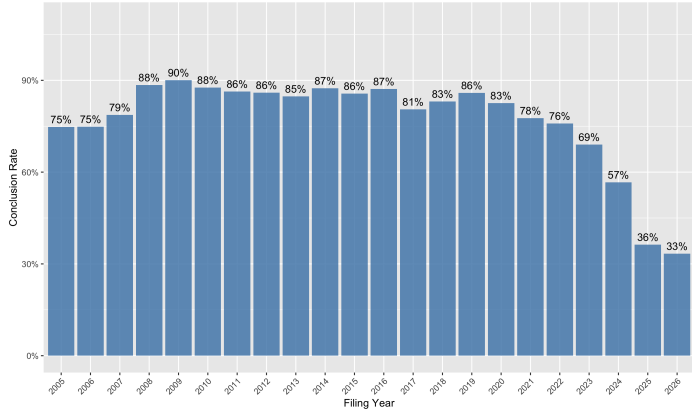


Figure 8. Liquidation case closure rate by filing year

Notes: This figure reports the share of liquidation cases filed in each year that are observed as closed by the latest TJSP data collection. The denominator is the filing cohort for each year. Lower closure rates for recent cohorts partly reflect right-censoring because those cases have had less time to reach a terminating event. The 2026 filing year is partial in the current dataset and should not be read as a full-year cohort.

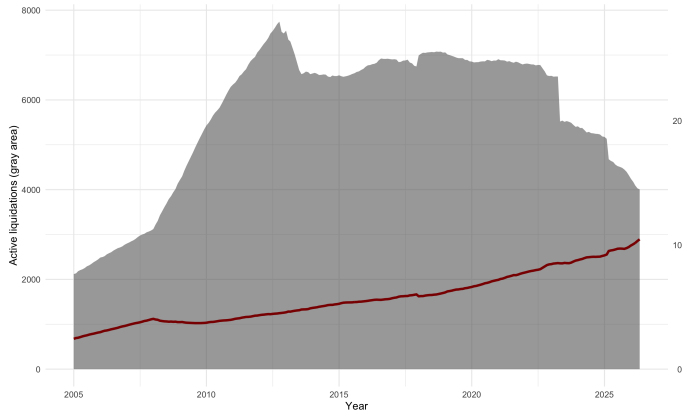


Figure 9. Liquidation backlog and average case length over time

Notes: This figure reports the evolution of the liquidation backlog and the average length of active liquidation cases in the TJSP data. Backlog is the stock of liquidation cases that are active in each year. Average case length is measured in months since filing among those active cases, so an increase can occur even when the number of active cases falls if the remaining pending cases are older.

5.2 *Out-of-court reorganizations*

Both in São Paulo and in the rest of the country, there is evidence that this out-of-court procedure is being more requested after the reform. This evidence speaks to the coordination-cost mechanism discussed in Section 3: if out-of-court reorganization becomes easier to approve and broader in scope, some debtors and creditors may choose a less court-intensive restructuring path. In this subsection, the main outcome is the share of out-of-court reorganizations among all reorganization filings, where the de-

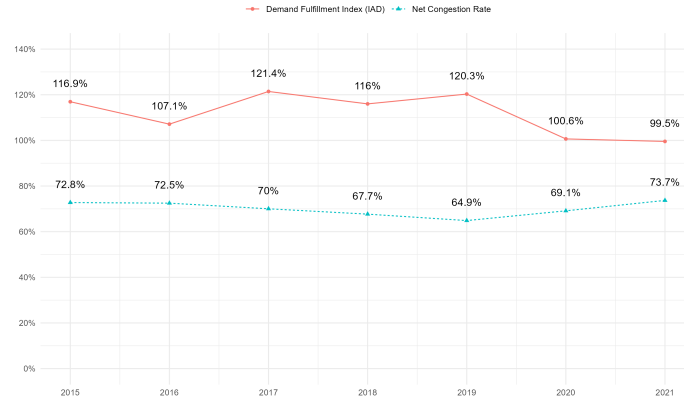


Figure 10. Court congestion in São Paulo bankruptcy courts

Notes: This figure reports CNJ court-performance indicators for São Paulo courts with jurisdiction over bankruptcy cases, specialized or not. IAD is the clearance rate, calculated as resolved cases divided by new cases in the period. The net congestion rate is the share of pending non-suspended cases relative to pending non-suspended plus resolved cases. These indicators describe court capacity and should be read as institutional context for the timing of liquidation and reorganization outcomes.

nominator is the sum of judicial reorganizations and out-of-court reorganizations. Figure 11 shows that, for the state of São Paulo, this share increased after the reform. Although the annual series remains volatile, the post-reform levels are above most of the previous decade and suggest renewed use of the procedure.

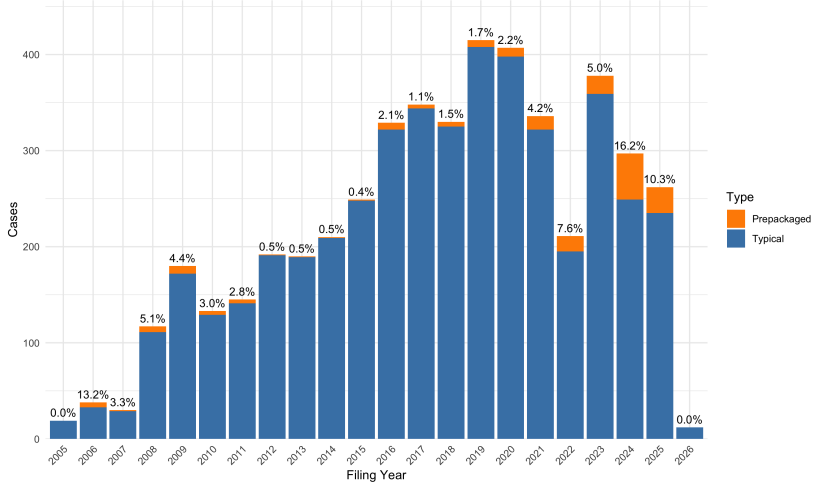


Figure 11. Out-of-court reorganization as a share of total reorganization filings

Notes: This figure reports out-of-court reorganization filings as a share of total reorganization filings in São Paulo, using TJSP data. The denominator is the sum of judicial reorganization and out-of-court reorganization filings. The measure captures the relative use of the out-of-court procedure within formal reorganization filings, not informal workouts that never reach court. The 2026 filing year is partial in the current dataset and should not be read as a full-year total.

Throughout Brazil, we can also see signs of its use. Considering the entire country, Figure 12 shows that the national share of out-of-court reorganizations rose after the reform, peaking in 2024 before declining in the 2025 and partial 2026 observations. This national pattern is led primarily by São Paulo, as shown in Figure 13. Regardless, the procedure is also being adopted in other states. Figure 14 shows out-of-court reorganizations being filed in Minas Gerais (MG) only after the reform, and in Goiás (GO) essentially only after the reform, with a single pre-reform filing in 2020 and none in 2021, while there was continued use in Rio de Janeiro (RJ) and a surge of filings in São Paulo in 2022 and 2024[5]. The evidence therefore points less to a smooth national diffusion and more to concentrated adoption in specialized markets, especially São Paulo.

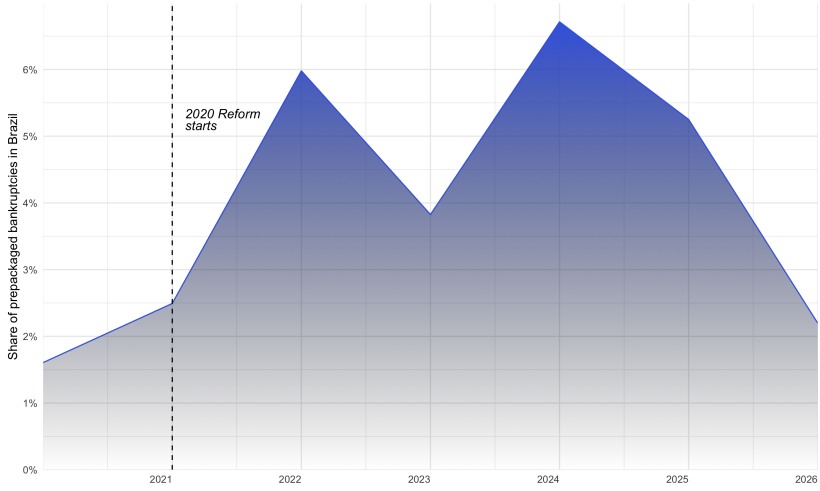


Figure 12. Out-of-court reorganization as a share of reorganization filings in Brazil

Notes: This figure reports the national share of out-of-court reorganization filings in total reorganization filings, using CNJ data. The denominator is the sum of judicial and out-of-court reorganization filings. Because the source and update schedule differ from the TJSP microdata, the national series should be used to assess broad diffusion rather than to match São Paulo counts exactly in every year. The 2026 observations are partial in the current CNJ extract and should not be read as full-year totals.

Data from the Brazilian Observatory of Out-of-Court Reorganization (*Observatório Brasileiro de Recuperação Extrajudicial*, OBRE) underscores the increasing significance of this mechanism in managing debt. Nationally, the volume of debt negotiated through out-of-court reorganizations surged from R$ 7.06 billion in 2023 to R$ 12.27 billion by mid-August 2024[6], reflecting a substantial 74% increase. According to a report in *Valor Econômico*, OBRE's director, Juliana Biolchi, highlighted that the complexity of this procedure is likely to concentrate its application among larger cases, as it demands the expertise of the most specialized law firms.[7]

[5] We omitted data for states with zero or insufficient filings to warrant any analysis

[6] The data was extracted in 14 August 2024

[7] Guimarães, Fernanda, and Adriana Mattos. 2024. "Mais empresas optam por recuperação extrajudicial." *Valor Econômico*. Available at: https://valor.globo.com/empresas/noticia/2024/08/12/mais-empresas-optam-por-recuperacao-extrajudicial.ghtml.

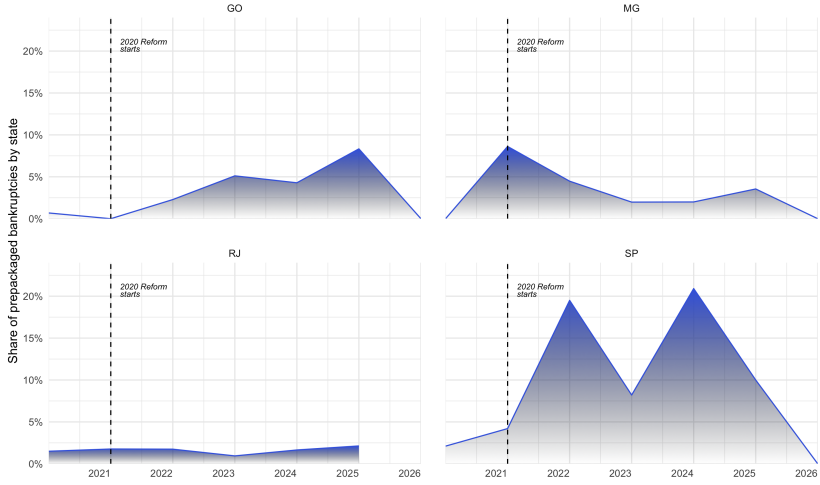


Figure 13. Out-of-court reorganization share across Brazilian states

Notes: This figure reports out-of-court reorganization filings as a share of total reorganization filings across Brazilian states, using CNJ data. The denominator in each state is the sum of judicial and out-of-court reorganization filings. The figure highlights geographic concentration in the relative use of the procedure and should be read together with the count-based state figure.

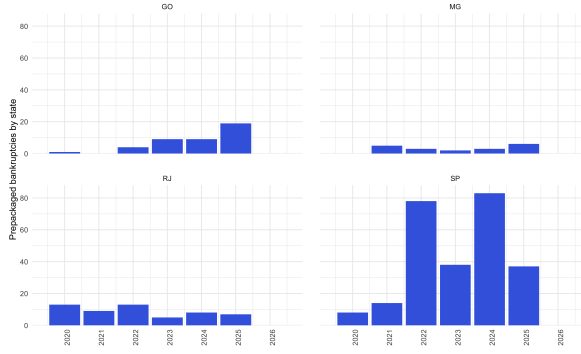


Figure 14. Out-of-court reorganization filings across Brazilian states

Notes: This figure reports state-level counts of out-of-court reorganization filings using CNJ data. The figure measures the number of formal out-of-court reorganization cases filed in court, not the amount of debt negotiated or private workouts outside the judicial system. States with zero or very few filings are less informative for trend analysis.

This procedure, however, may have another merit not shown by this data. Before the 2005 reform, out-of-court workouts were strictly forbidden. Nevertheless, they had to be allowed for any out-of-court reorganization to be filed. If the distressed firm and its creditors can then reach a satisfactory agreement for all sides, there is no need to take the issue to a court. Unfortunately we cannot observe out-of-court workouts in our data, lest estimate how many would not have occurred had the law not allowed, in 2005, or improved, in 2020, out-of-court reorganizations in the country. However, according to the aforementioned *Valor Econômico* report, creditors are proactively approaching compa-

nies they perceive as potentially facing financial distress to renegotiate debt repayment before the debtor is compelled to seek in-court reorganization. This proactive strategy has contributed to the rise in out-of-court reorganizations across the country. The same report suggests that the limited use of the procedure in previous years reflected both unfamiliarity with the mechanism and the fact that firms often sought judicial reorganization only when they were already under creditor pressure and needed immediate protection. As discussed in Section 2.2, the recent reform has enhanced the protection available to distressed firms filing out-of-court reorganizations, bringing it closer to the safeguards provided under in-court procedures. Consequently, it is logical that more companies are opting for out-of-court workouts to mitigate the costs associated with formal reorganization.

5.3 *Reorganizations*

The reorganization analysis considers instruments that operate through different mechanisms in the conceptual framework summarized in Table 1. Tax rules affect whether fiscal liabilities can be reconciled with going-concern preservation. DIP financing affects liquidity during distress. Preliminary examination affects screening and information. Early stay affects the timing of protection against enforcement. Creditor-proposed plans affect creditors' bargaining power when negotiating the debtor's plan.

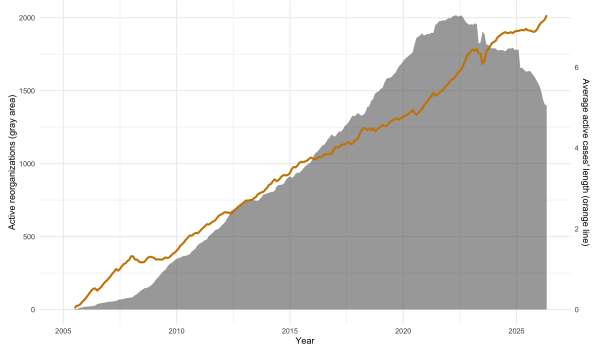


Figure 15. Reorganization backlog and average case length over time

Notes: This figure reports the evolution of the judicial reorganization backlog and the average length, in years, of active judicial reorganization cases in the TJSP data. Backlog is the stock of active cases in each year. Average case length is elapsed time since filing among active cases, so it summarizes the age of the pending stock rather than the duration of completed reorganizations.

Figure 15 provides the background trend for judicial reorganizations, showing the evolution of the active-case stock and average case length. Active reorganizations are cases that have been filed and have not yet reached a terminating event in the docket[8], while average active-case length is the average elapsed time since filing among those

[8] Reaching a terminating event means the reorganization is registered as extinct, canceled or archived.

pending cases. This context matters because the procedural instruments analyzed below operate in a system where the volume and duration of pending reorganizations can shape both debtor strategy and judicial capacity. The figure shows a steady accumulation of active reorganizations after the creation of the procedure, with the stock peaking around mid-2022 and then declining. At the same time, the average length of active reorganizations has continued to rise, which means that the pending stock is still aging even as the number of active cases falls.

5.3.1 *The payment of tax debt* With all the changes easing the payment of the tax debts by distressed firms we expect the requirement of proof of tax compliance to increase after the reform. To detect this we searched the judges' decisions on reorganization cases for citations of article 57 of the bankruptcy law, which requires proof of tax compliance, or to the compliance certificates themselves[9]. The variable in Figure 16 identifies whether the case docket mentions tax compliance certificates; it does not identify whether the certificate was actually presented, required, waived, or contested. Unfortunately, therefore, we can only identify citations to the certificates, not if they were required or dismissed.

Still, variations in citations may indicate greater or fewer disagreement over the correct procedure. For instance, if it is obvious that the certificates should not be required, a judge may approve a reorganization in which the firm did not present them without ever citing either the law nor the certificates themselves. If it is not, a government treasury may complain about their absence and the judge will need to either require them or explain why they will not do it, making a citation in both cases.

Conversely, if everyone agrees that the certificates should be required, judges will cite them often to require them or to acknowledge the firms' compliance. If this agreement falls, a judge may not ask for the certificates and the treasury may conclude it is not worth to complain in that case and it would be better to focus its efforts elsewhere. In this case, therefore, no citation would occur.

For these reasons, we interpret increases in citations either as more judges believing they should require the compliance certificates or the different treasuries believing it is worth asking for them. Conversely, we interpret a decrease in citations indicating a weaker belief in the necessity and worth of this requirement.

Figure 16 shows the share of citations increasing after the creation of specific installment plans for firms filing for reorganization, a reduction immediately after the reform, and another increase from 2023 onward. The figure is based on cases with docket entries in each year, so its counts differ from filing totals in Table 2 and from the stock of active cases in Figure 15. Among top-debt cases, the share mentioning tax compliance certificates reached 20.4% in 2023, 26.1% in 2024, and 29.9% in 2025 before falling in the partial 2026 data. The increase after the mid-2010s was expected, since

[9] Tax compliance certificates certify that the firm either has no outstanding tax liabilities or has outstanding tax liabilities whose enforceability has been suspended (for example, because they are being repaid under an installment agreement and payments are current) or that are secured. Under Brazilian law, these certificates may be issued either as Negative Tax Clearance Certificates ("*Certidões Negativas de Débito*") or as certificates recognizing tax compliance despite outstanding tax liabilities ("*Certidão Positiva com Efeitos de Negativa de Débitos*")

the creation of these plans tried to solve a legislative gap and directly responded to the jurisprudence which would waive firms from the compliance due to a lack of plans that would allow them to recover.

The reduction from 2020 to 2022 even after the tax transaction law and the reform, on its turn, may be explained by a combination of the jurisprudence and the pandemic: since 2005, the main argument preventing the compliance certificates to be required was that the repayment options available to distressed firms were insufficient to allow them to recover. The economic crisis caused by the pandemic made that even more difficult even considering the installment plans created in 2014. This would only change by the end of 2023, when the STJ decided that the changes made by the 2020 reform were enough for the firms to pay their tax debts and successfully reorganize. With this change and the pandemic's waning effects, discussions over their requirement could grow again after 2023. Indeed, on May 2, 2024, the São Paulo Court of Justice (TJSP) reversed a decision that granted a reorganization without proof of tax compliance[10], illustrating the renewed judicial scrutiny of this requirement.

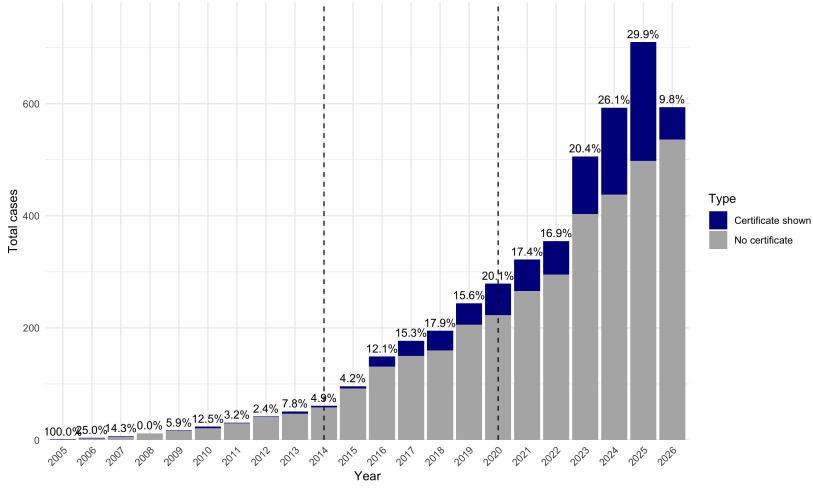


Figure 16. Cases mentioning tax compliance certificates by year

Notes: This figure reports the number and share of judicial reorganization cases mentioning tax compliance certificates by year in the TJSP data, restricted to cases in the top 20% of reported debt. Mentions are identified from the text of docket decisions and therefore measure observable judicial discussion of the requirement, not necessarily final proof of tax compliance by the debtor. The series is organized by the year in which the case has an observed docket entry mentioning the topic, so counts do not necessarily match annual filing totals or the total active-case stock. Dashed vertical lines identify the years when the installment and tax transaction laws were approved, respectively. The figure is used as a proxy for the salience and enforceability of tax-compliance requirements after the reform.

To assess whether firms are using either the installment plans or the offer-in-compromise to regularize their debts we searched the decisions for citations of article 10-A (the installment plans) and the tax transaction law, as well the expression

[10] Agravo de Instrumento nº 2039112-05.2024.8.26.0000. 2ª Câmara Reservada de Direito Empresarial do Tribunal de Justiça de São Paulo. Judgment date: May 2, 2024. Publication date: May 2, 2024.

"*transação tributária*". Figure 17 classifies each case according to whether the docket mentions only installment plans, only tax transaction, both instruments, or none of them. As in Figure 16, the annual counts refer to observable docket entries mentioning the instrument, not to new filings in that year. The figure shows that although most cases cite neither instrument, tax transaction has become more visible after the reform and appears more often than installment plans alone. If we analyze only the cases with the highest debts, however, we can see that these instruments are more cited the higher the debt, as shown in Figure 18. After the reform, the share of cases citing offer-in-compromise reaches 36.8% in the top 1% of the debt distribution, 31.4% in the top 5%, 29.9% in the top 10%, and 26.0% in the top 20%, suggesting that the new fiscal tools are concentrated among firms for which tax regularization is more likely to be quantitatively relevant.

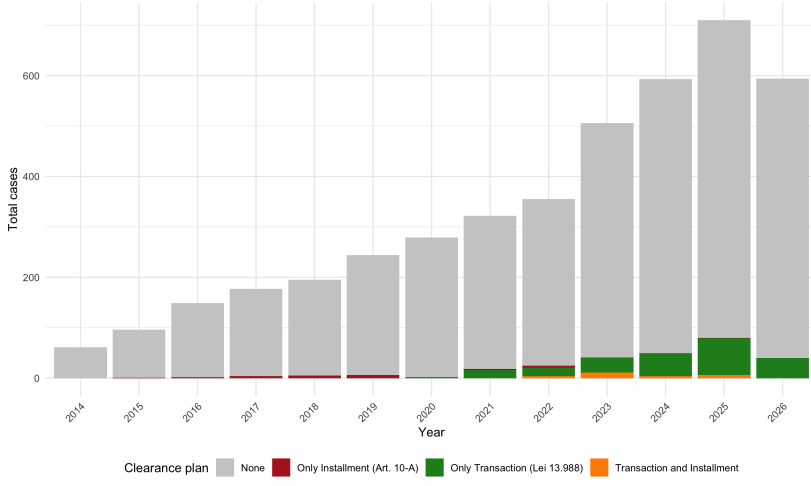


Figure 17. Cases mentioning tax settlement instruments by year

Notes: This figure reports the number and share of judicial reorganization cases mentioning tax-settlement instruments by year in the TJSP data, restricted to cases in the top 20% of reported debt. The series captures docket mentions of tax transaction and related tax-regularization mechanisms. The series is organized by the year in which the case has an observed docket entry mentioning the topic, so counts do not necessarily match annual filing totals or the total active-case stock. Because one case may discuss more than one tax instrument, the figure should be interpreted as evidence of salience in judicial practice rather than mutually exclusive use of each instrument.

Although the STJ, in October 2023, began to require tax compliance certificates for the approval of the reorganization plan, there were still some exceptions. The only remaining hypotheses in which the non-requirement of negative certificates persists, for the STJ, are those resulting from the legislative omission on the installment or transaction of tax debts with the States, Federal District, and Municipalities[11]. On this matter, the state of São Paulo approved, in November 2023, a tax transaction law very similar

[11] Recurso Especial nº 2.053.240 – SP. Relator Sr. Ministro Marco Aurélio Bellizze. Terceira Turma. Data de julgamento: 14/10/2023. Data de publicação: 19/10/2023.

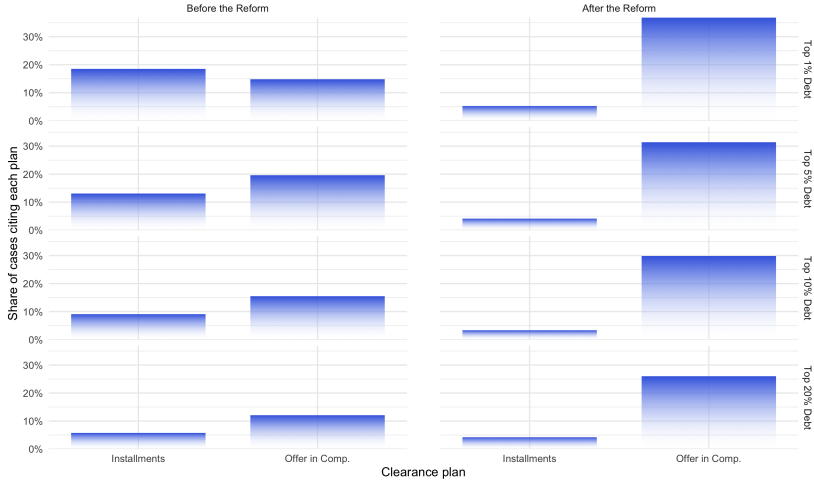


Figure 18. Mentions of tax settlement instruments by debt size before and after the reform

Notes: This figure reports mentions of tax-settlement instruments by reported debt size before and after the 2020 reform. Debt is measured in Brazilian reais as reported in case documents. The figure examines whether tax-regularization instruments are more visible among larger-debt reorganizations, but the measure is based on textual mentions and does not identify the amount actually settled or paid. Dashed vertical lines identify cases in the top 20% of reported debt.

to the national one. It helped to close this legislative gap in one state and it remains to be seen if other states will follow.

5.3.2 *Financing the debtor during the reorganization* To detect the use of the benefits to suppliers during the reorganization we searched the decisions for mentions of the expression "*credores parceiros*", commonly used to refer to the suppliers who continue to provide essential goods and services to firm during the reorganization. This proxy does not capture every form of DIP financing; rather, it identifies docket mentions of supplier-benefit arrangements that are observable in judicial decisions. There is evidence of an increase in the use of these benefits, although from a low baseline, as we can see in Table 5. Before the reform, approximately 1.3% of cases cited them; after the reform, this share increased to 5.15%. Table 6 shows that these mentions are more concentrated among cases with larger reported debts, reaching 19.01% in the top 5% and 15.67% in the top 10% of the debt distribution. Figure 19 also shows that median reported debt is much higher among cases mentioning the benefit, about R$ 14.9 million compared with about R$ 0.1 million among cases without mentions.

Table 5. Cases mentioning DIP-financing provisions before and after the reform

Reform	Cite	Don't cite	Cite share (%)
Before	24	1 852	1.28
After	70	1 289	5.15

Notes: This table reports the number and share of judicial reorganization cases with docket mentions of DIP-financing provisions before and after the 2020 reform. The proxy is based on observable mentions in judicial decisions, including references to supplier-benefit or partner-creditor arrangements associated with financing during reorganization. It does not necessarily measure authorization, actual disbursement, or the amount of new financing.

Table 6. Post-reform DIP-financing mentions by debt percentile

Debt percentile	Number of cases	Share of cases (%)
In the top 1% debt	3	15.79
In the top 5% debt	23	19.01
In the top 10% debt	42	15.67
In the top 20% debt	64	11.72
All after-reform cases	70	5.15

Notes: This table reports DIP-financing mentions across the debt distribution of post-reform judicial reorganization cases. Debt percentiles are calculated using reported debt values in the case data. Each row reports the number and share of cases in that percentile group mentioning DIP-financing provisions. The final row reports the same post-reform universe used in Table 5. The table does not measure the amount of financing obtained.

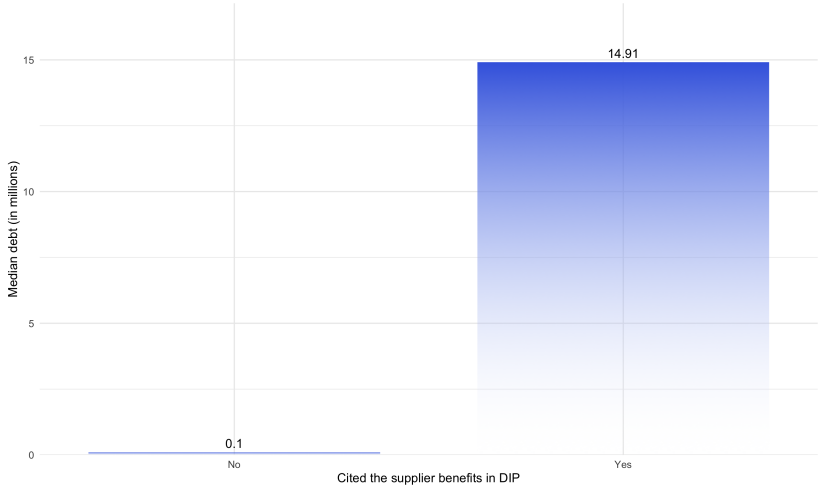


Figure 19. Median debt in cases with and without DIP-financing mentions

Notes: This figure compares median reported debt among judicial reorganization cases with and without mentions of DIP-financing provisions. Debt is measured in Brazilian reais as reported in the case data. DIP financing is proxied by observable docket mentions of the relevant provisions or supplier-benefit arrangements, so the figure captures the association between case size and judicial discussion of the instrument, not actual financing disbursement.

One of the factors pointed out, even before the reform, that discourages financial institutions from adhering to this type of financing is related to the provisioning rules for losses.[12] Resolution 2.682/1999, from the National Monetary Council, which establishes credit risk classification criteria for financial institutions, imposes, as a rule, that all operations of the same debtor are classified according to the one presenting the highest risk. There are ten classes, based on days overdue ranges, each with a required level of loss provisioning. The last class, reached when the client exceeds 180 days overdue on any contract with the financial institution, requires the bank to provision 100% of the total loaned to the client. Firms that apply for reorganization have overdue debts when

[12] Neculqueo, Amanda Sousa, Augusto Peduti Diniz Junqueira, Emilie Najar, and Juliana Akkari. 2022. "Recuperação judicial e o DIP financing." *Jusbrasil*. Available at: https://www.jusbrasil.com.br/artigos/recuperacao-judicial-e-o-dip-financing/1535929573.

they resort to the institute, and this delay continues to increase during the stay period. As a result, they tend to be classified in the worst rating, leading the financial institution to provision 100% of the amount of any new credit, making the operation quite onerous.

Some additional issues have been pointed out regarding the implementation of the changes made to the law to encourage greater use of the DIP-financing modality. First, concretely obtaining these resources will depend on the availability of assets to back these operations (Alves and Almeida, 2021). Second, commentators have noted uncertainty when substantial consolidation or asset commingling links a company in reorganization to another company in the same group that has assumed the position of partner creditor.[13] Third, in the courts, issues have arisen regarding the lack of consent from all creditors, the realization of this type of credit in the initial months of reorganization, and the judges' deliberation on authorizing this financing.[14]

A final consideration regarding a major difficulty in implementing this institute in Brazil. From the point of view of these creditors, the approval of DIP financing implies the creation of a new debt, which will compete in the reorganization plan with payments of debts prior to the approval and will have higher payment priority. Thus, for them to have incentives to approve the new financing, pre-existing creditors need to believe that by increasing the liquidity of the reorganizing company, it will contribute to the recovery of its value and, consequently, to maximize the recovery of pre-existing credits. Issues of inadequate transparency on the part of debtors affect creditors' credibility, eliminating their incentives to approve the new credit and release assets to be used as collateral. In the U.S., it is common to reallocate guarantees of pre-existing credits to be used in contracting new loans during reorganization. In this case, creditors who give up their guarantees renegotiate the terms of their payment and have greater credibility that this action will contribute to maximizing the recovery of past credits. This still does not work adequately in Brazil. Measures that create rules to facilitate creditor articulation can be useful.

5.3.3 *Preliminary examination* We searched the decisions for mentions of article 51-A of the bankruptcy law and terms used to refer to this institute, such as "*constatação prévia*", "*perícia prévia*" and "*exame prévio*". The variable identifies whether the docket mentions a preliminary examination; it does not directly observe the content or quality of the expert report, nor whether the examination changed the final decision. As shown in Figure 20, there is evidence that the requirement of this practice by judges had already been growing before the reform and then increased substantially after codification. The share of filing cohorts mentioning preliminary examination reached 26.2% in 2023, 41.4% in 2024, and 51.5% in 2025; the partial 2026 cohort is too recent to interpret because preliminary-examination mentions may appear after filing.

[13] Ferreira, Guilherme. 2021. "DIP financing, alternativa atrativa para empresas em RJ." *Consultor Jurídico*. Available at: https://www.conjur.com.br/2021-dez-06/opiniao-dip-financing-alternativa-atrativa-empresas-rj/.

[14] Botti, Flávia Bomtempo. 2023. "DIP financing: entenda como funciona no Brasil." *Aurum*. Available at: https://www.aurum.com.br/blog/dip-financing/.

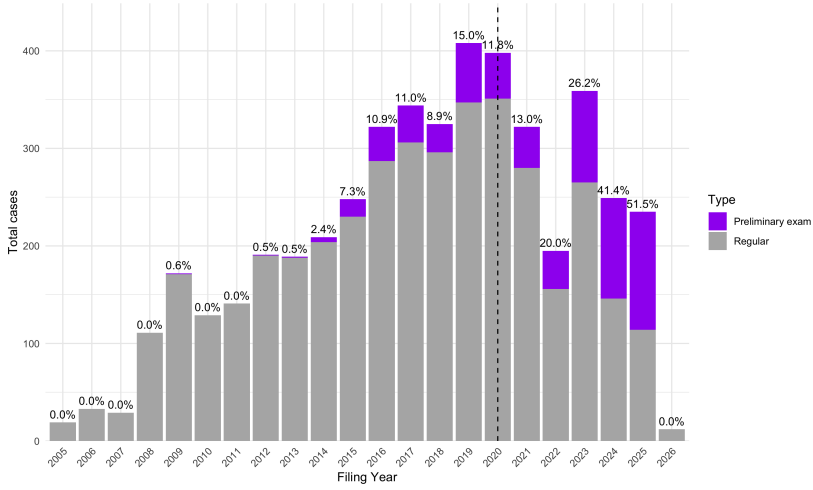


Figure 20. Cases mentioning preliminary examination by year

Notes: This figure reports the number and share of judicial reorganization cases mentioning preliminary examination by year in the TJSP data. Preliminary examination refers to the expert screening mechanism used to assess operating conditions, documentation, and possible misuse before or around the decision to grant reorganization. The figure measures observable mentions in judicial decisions and may not capture informal screening that is not recorded in the docket text.

Figure 21 indicates that this growth is not evenly distributed across courts. It comes mostly from specialized courts, especially the 3rd Bankruptcy and Judicial Reorganization Court for the judicial district of São Paulo, the capital, and the Business Court, with jurisdiction over multiple judicial districts in the state. It is unclear if this is due to the reform, however. The Business Court was created in 2020, and the 3rd Bankruptcy and Judicial Reorganization Court, created in 2017 to initially deal only with cases predating the 2005 reform, only started receiving new cases in the period after 2020. Therefore, we cannot say if the judges in these courts were swayed to ask for preliminary examinations by the law or if they would have asked for it even without this change.

As explained in Section A.3.3, there were disagreements on the adequacy of the preliminary examination and, since the reform did not forced its use, only allowed it, the effect could only be to sway those judges willing to use it but in doubt if they could.

The main challenges in implementing the preliminary examination institute involve the uniformity of the procedure and methodology across the country. The maximum period has been made flexible by jurisprudence,[15] bringing up once again the issue – identified in the practice that occurred before the reform – of companies that urgently need the granting of reorganization. While this issue is not properly addressed either by law or jurisprudence, the adoption of the preliminary examination may continue to depend more on convincing judges they should use it than on any legal permission to do so.

[15] Reis, Gabriela. n.d. “Constatação prévia e stay period: procedimentos da recuperação judicial.” BFBM Advogados. Available at: https://www.bfbm.com.br/conteudo/constatacao-previa-e-stay-period-procedimentos-da-recuperacao-judicial.

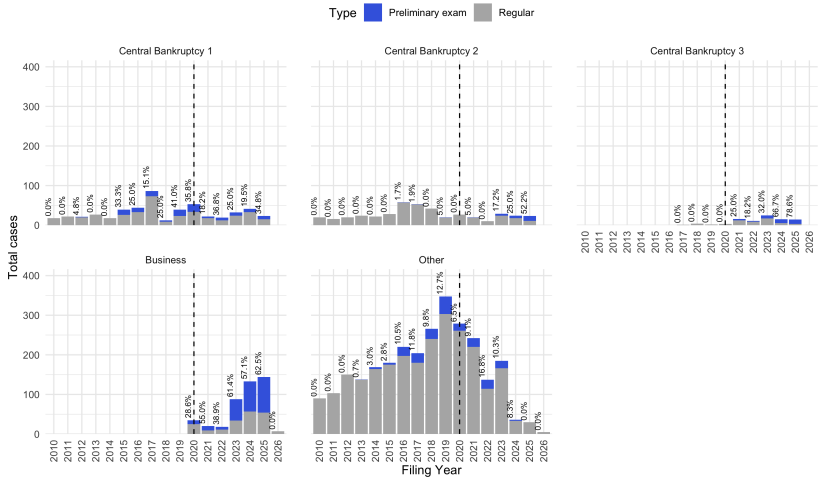


Figure 21. Judicial reorganization cases mentioning preliminary examination, by filing year and court group

Notes: This figure reports, for each filing year and court group, the total number of judicial reorganization cases, divided between cases with docket mentions of preliminary examination and other cases. Percentage labels show the share mentioning preliminary examination within each court-year group. The panels distinguish Central Bankruptcy Courts 1, 2, and 3, the Business Court, and all other courts. Because the measure is organized by filing year, recent cohorts may still receive later docket entries mentioning preliminary examination after the current data collection.

5.3.4 *Early stay period* We searched the decisions for mentions of article 6, paragraph 12, to detect if firms were asking for the anticipation of the stay period. However, it should be noted that in the data we have available, we are only able to analyze the cases that have been filed. Therefore, we can only search for mentions of the aforementioned article. The cases with requests made before the filing of the reorganization request – provided for in article 20-B, paragraph 1 – we are not able to identify.

The text proxy identifies 134 cases with at least one docket mention of this instrument. This count should be interpreted as observable discussion or request of early-stay protection, not necessarily as a granted request. Figure 22 shows that early-stay mentions remain a limited share of active cases, but their presence in the data is useful for distinguishing whether the instrument is being used mainly in exceptional cases or becoming part of a broader procedural strategy. To characterize these cases, we use three proxies for complexity and scale: the number of docket entries per month, reported debt, and the number of creditors[16]. Docket entries per month capture procedural intensity; debt and creditor counts capture the size of the restructuring problem and the degree of creditor coordination required. Some features of these cases suggest that they started among the most complex in the state, but are approaching the average case. Initially, the cases requesting the early stay benefit were among those with the largest number of docket entries (Figure 23), the largest debt (Figures 24, 28, and 26) and the largest number of creditors (Figures 25, 29, and 27). However, more recently,

[16]Creditors are the reported creditors in the proceedings and include individuals. We could not verify how many, if any, of them were workers.

these characteristics of the cases requesting this instrument are approaching those of the cases not requesting it.

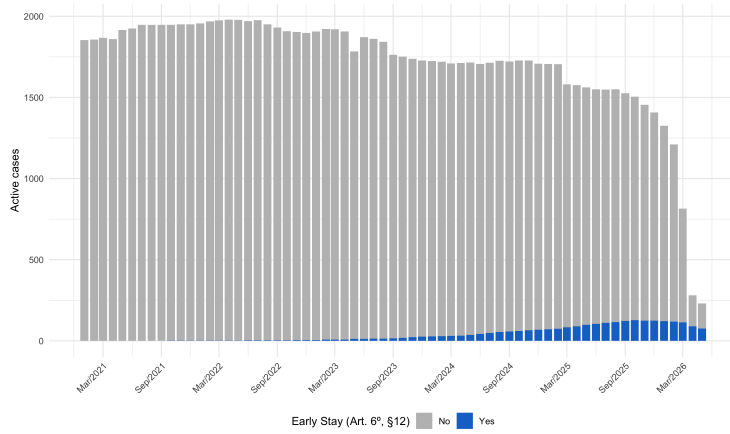


Figure 22. Active reorganization cases by early-stay request

Notes: This figure reports active judicial reorganization cases with and without an early-stay mention over time in the TJSP data. It starts in 2021 because references to the early stay period could only appear after the reform. Early stay refers to requests for anticipatory suspension of enforcement actions before or around the formal granting of reorganization. The measure captures docket mentions, not necessarily granted protection.

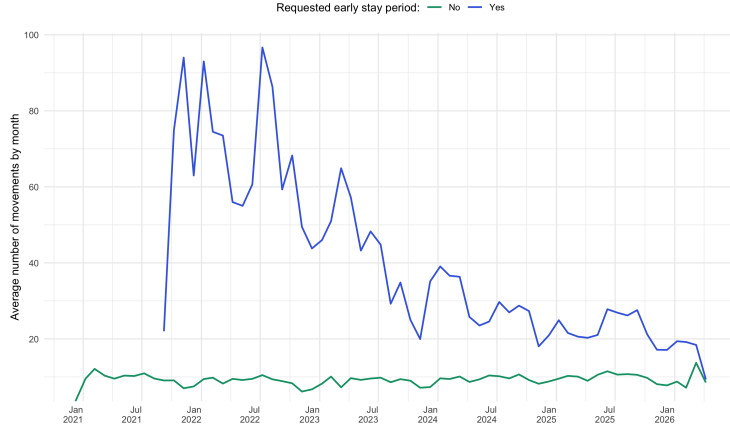


Figure 23. Average number of procedural movements by early-stay request

Notes: This figure compares the average number of procedural docket entries in active judicial reorganization cases with and without an early-stay request. It starts in 2021 because references to the early stay period could only appear after the reform. Docket entries proxy for procedural activity and case complexity. The comparison is descriptive and should not be interpreted as a causal effect of early stay.

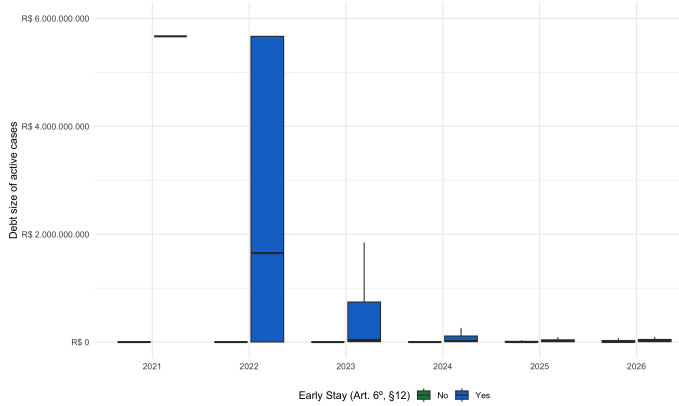


Figure 24. Debt size distribution by early-stay request

Notes: This figure reports the yearly distribution of reported debt size among active judicial reorganization cases, separately for cases with and without an early-stay request. It starts in 2021 because references to the early stay period could only appear after the reform. Debt is measured in Brazilian reais as reported in case documents. The distributional display is used instead of only average values because a few very large cases can strongly affect means.

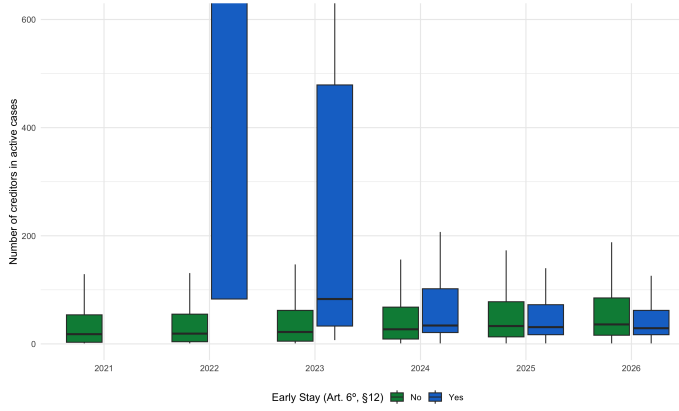


Figure 25. Number of creditors distribution by early-stay request

Notes: This figure reports the yearly distribution of the number of creditors among active judicial reorganization cases, separately for cases with and without an early-stay request. It starts in 2021 because references to the early stay period could only appear after the reform. Creditor counts are taken from the available case data and should be interpreted as reported creditors in the proceeding. The figure is descriptive evidence on whether early-stay requests are associated with more complex creditor structures.

The possibility to anticipate the stay period is a benefit intended to help firms that need its protection so urgently that waiting for the judge to decide on the reorganization acceptance would hinder or even prevent its recovery. Obtaining it means that creditors become unable to demand the payment of their credits even before knowing if the debtor has the right to the procedure and this should be the exception. The higher the debt, the greater the impact of creditors pursuing their claims, and more creditors

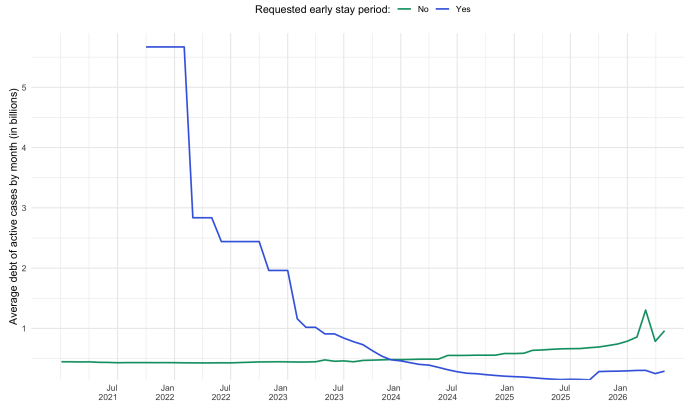


Figure 26. Average debt size by early-stay request

Notes: This figure compares average reported debt size in active judicial reorganization cases with and without an early-stay request. It starts in 2021 because references to the early stay period could only appear after the reform. Debt is measured in Brazilian reais as reported in case documents. Because averages can be sensitive to very large cases, the figure should be read together with the debt-distribution figures by early-stay status.

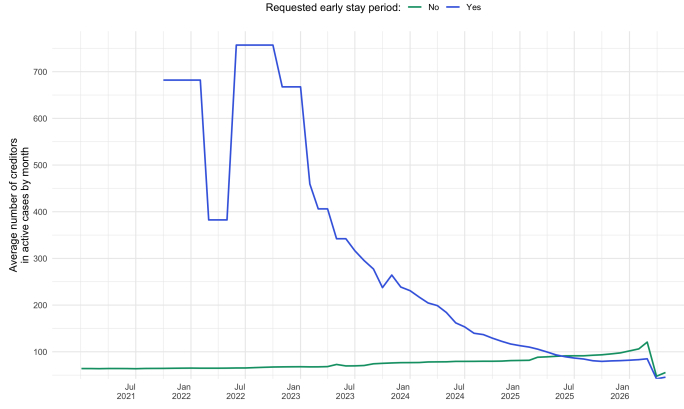


Figure 27. Average number of creditors by early-stay request

Notes: This figure compares the average number of creditors in active judicial reorganization cases with and without an early-stay request. It starts in 2021 because references to the early stay period could only appear after the reform. Creditor counts are taken from the available case data. Because a few complex cases can strongly affect averages, the figure should be read together with the distributional creditor-count figures.

means more chances of that occurring. The early-stay figures therefore suggest a nuanced pattern. The first cases requesting the benefit were exceptionally large and complex, which is consistent with the legal rationale of emergency protection. Over time, however, average docket entries, debt, and creditor counts among early-stay cases fall toward the levels observed among other active cases. This convergence does not prove abuse, since urgency can arise from creditor behavior not captured by these variables,

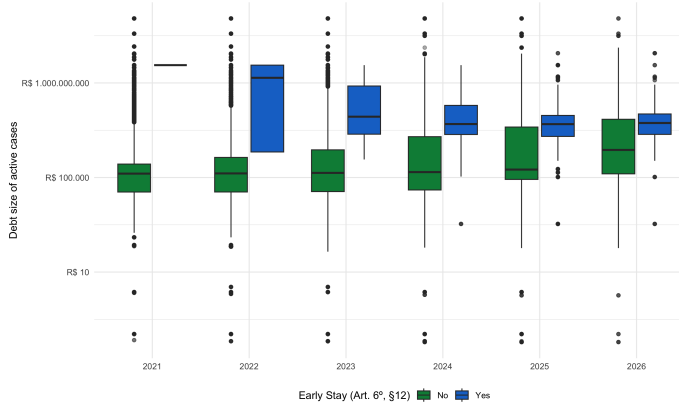


Figure 28. Debt size distribution by early-stay request, log scale

Notes: This figure reports the yearly distribution of reported debt size among active judicial reorganization cases by early-stay status using a logarithmic scale. It starts in 2021 because references to the early stay period could only appear after the reform. The log scale makes the comparison less dominated by extreme high-debt cases and helps display differences across the distribution. Values should be interpreted as descriptive evidence on case size, not as causal effects of early-stay requests.

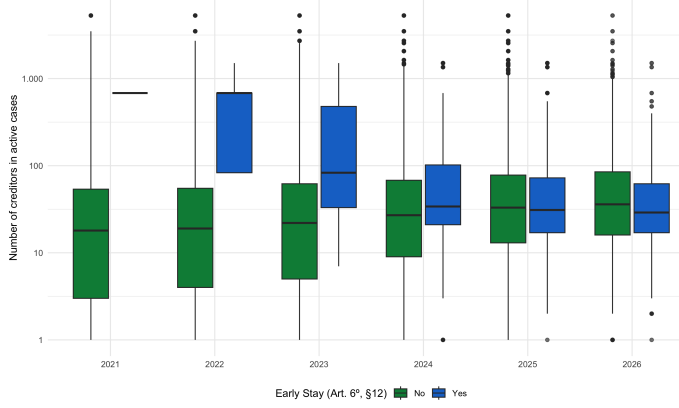


Figure 29. Number of creditors distribution by early-stay request, log scale

Notes: This figure reports the yearly distribution of creditor counts among active judicial reorganization cases by early-stay status using a logarithmic scale. It starts in 2021 because references to the early stay period could only appear after the reform. The log scale helps display variation when creditor counts are highly skewed. The figure complements the linear-scale distribution and the average-creditor comparison.

but it does indicate that the instrument is no longer restricted only to the most visibly complex cases.

Yet, there is evidence of the importance and potential growth of the institute. The National Council of Justice created a working group intended to discuss relevant issues related to reorganization and liquidation procedures – the National Forum of Business Recovery and Bankruptcy (FONAREF). In 2023, it held its first congress, where they

approved 15 statements to guide the correct application of the institute's request. The statements involve the requirements for granting, the scope of its effects, its initial term, setting of deadlines and how to revoke it. The judiciary, then, seems to be well aware of the possibility of abuse.

5.3.5 *Reorganization plan proposed by creditors* We searched the decisions written after the reform for mentions of the article allowing creditors to propose an alternative plan (56, paragraph 4) and found 20 cases. However, we could identify only one where this plan was considered by the creditors. The others either cited the older version of this article, which required the liquidation of the firm if the creditors rejected the debtor's plan, or discussed the possibilities for extending the stay period (the law automatically extends it if creditors decide to propose an alternative plan).

So far since the 2020 reform, hence, there is no significant evidence of the use of alternative reorganization plans proposed by creditors. Instead, creditors seem to more frequently apply amendments to the debtor's proposed plan and reach a consensual resolution on the final terms.[17]

Several reasons have been identified for this. One reason is that the 30-day period has been considered insufficient. As highlighted by Guariente and Fonseca (2021), creditors do not have detailed knowledge of all the firm's information to be able to formulate an efficient plan within this short timeframe. Another reason, as also pointed out by the authors, is that drafting a reorganization plan is labor-intensive and quite costly, making this alternative less attractive. Additionally, they note that creditors are generally more interested in the satisfaction of their claims rather than the firm's recovery to the extent of dedicating themselves to and being responsible for formulating a plan.

The limitation of imposing new obligations on the debtor and the exemption of personal guarantees[18] have been identified as factors that discourage the participation of major creditors – such as financial institutions, which represent the majority of credit holders – in the alternative plan.[19]

Sacramone and Amaral (2023) conduct an analysis on the feasibility of the creditors' alternative plan as prescribed after the 2020 reform. In addition to pointing out the quorums and deadlines required for its presentation as obstacles, they highlight limitations regarding the sale of assets as regulated by Law 14,112/2020.

6. Additional analyses

The empirical analysis outlined in the previous section predominantly relied on the textual data from judicial decisions and docket entries. The primary objective was to examine evidence regarding the implementation of the changes introduced by the 2020

[17] Abreu, Luciana. 2024. "Apontamentos sobre o plano alternativo de credores na recuperação judicial." *Consultor Jurídico*. Available at: https://www.conjur.com.br/2024-jan-24/apontamentos-sobre-o-plano-alternativo-de-credores-na-recuperacao-judicial/.

[18] Law 11,101/2005, Article 56, Paragraph 6, Items IV and V. Law 11,101/2005 is available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11101.htm.

[19] Cisneiros, Tiago. 2021. "O plano alternativo dos... legisladores?" *Consultor Jurídico*. Available at: https://www.conjur.com.br/2021-fev-26/tiago-cisneiros-plano-alternativo-legisladores/.

reform, as discussed in Section 2. While this approach provided a wealth of detailed case information, it did not allow an analysis based on firm size and sector.

In this section, we utilize aggregate bankruptcy data from Serasa Experian to investigate the effects of the reform across both dimensions. The measures are aggregate counts and rates, not case-level outcomes. Reorganization filings are requests for judicial reorganization recorded in the Serasa series. Acceptance rates compare accepted reorganization requests with filings in the same category and year; because acceptances may refer to cases filed in earlier periods, these rates can exceed 100% in some sector-year cells. Plan confirmation rates are based on confirmations of reorganization plans and are interpreted with a lag because confirmation typically occurs well after filing and acceptance. In Section 6.1, the focus is on small firms, which receive special treatment under the law. Section 6.2 concentrates exclusively on sole proprietor farmers, who have been in a legal gray area since 2005 regarding their eligibility to file for bankruptcy. However, they are now explicitly included in the law, and some are granted one of the benefits extended to small firms: a special reorganization plan that simplifies the reorganization procedure.

6.1 *Reorganizations by firm size*

The reorganization procedure is costly, and while large firms can generally absorb these expenses with relative ease, it often proves burdensome for small firms in distress. Additionally, small firms typically have the lowest value as going concerns. Consequently, only a few small firms should ideally be filing for reorganization. Nevertheless, figures 30 and 31 demonstrate that small firms constitute the majority of those filing for reorganization and that this procedure is increasingly favored over liquidation.

There are two possible explanations for this trend. First, despite the improvements introduced by the 2005 reform, the liquidation process remained dysfunctional. Cases often take nearly a decade to conclude and recovery rates are very low. For instance, Nunes et al. (2022b) found that recovery rates averaged only 6.1% in the state of São Paulo from 2010 to 2020. Consequently, liquidation was deemed excessively punitive for debtors and too slow and ineffective for creditors, making it a last resort for both parties. Indeed, Figure 31 illustrates the growing preference for reorganization among firms of all sizes.

The second explanation could be that judges do not conduct adequate screening when firms file for reorganization. The STJ's jurisprudence establishes that the responsibility for determining a firm's viability rests with its creditors, while the role of the judiciary should be limited to ensuring that no illegalities occur[20]. Figure 32 supports this perspective, showing that judges accept most reorganization filings from firms of all sizes. Creditors, on the other hand, may agree to substantial discounts on their claims in a reorganization plan to avoid greater losses if the debtor is liquidated. From 2010 to 2020 in the state of São Paulo, secured creditors accepted discounts of 47.2% on average in 44.3% of cases, while unsecured creditors accepted higher discounts of 70.8%

[20] See decision on REsp 1359311/SP, in 2014, as well as recent decisions citing it, such as AIRESP 1855432, in 2022, and AIRESP 2041659, in 2023

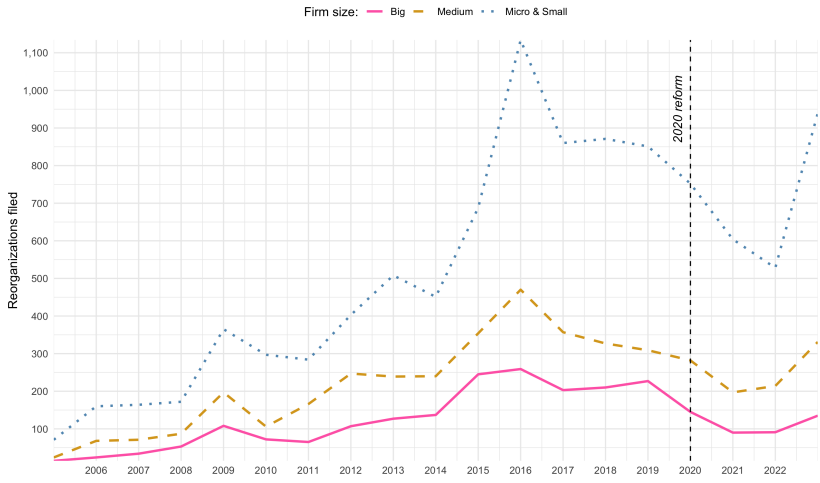


Figure 30. Reorganization filings by firm size and year

Notes: This figure reports aggregate Serasa Experian counts of judicial reorganization filings by firm-size category and year. The data are national and therefore complement, rather than replicate, the TJSP case-level data. Firm-size categories follow the Serasa classification available in the aggregate data.

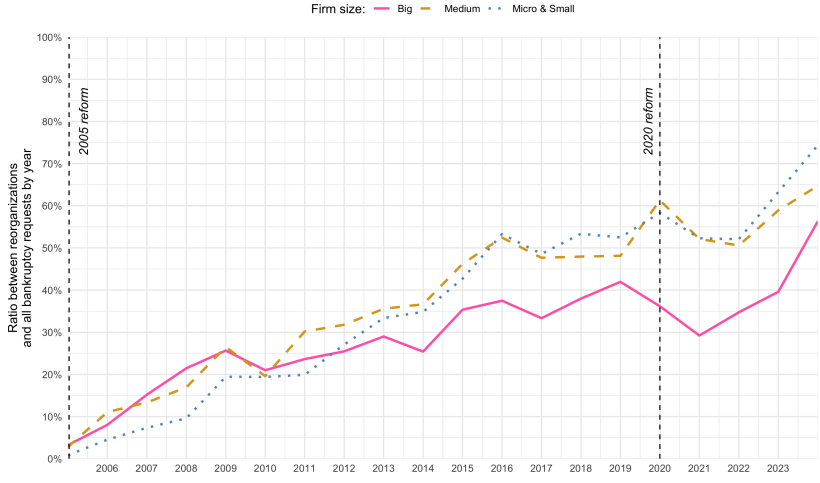


Figure 31. Share of reorganization filings by firm size and year

Notes: This figure reports the share of reorganization filings in all bankruptcy filings by firm-size category and year, using aggregate Serasa Experian data. The denominator is the sum of judicial reorganization and liquidation filings. The measure is used to describe the relative preference for reorganization over liquidation across firm sizes. Because the data are aggregate, the figure does not identify case-level transitions between procedures.

on average in 82.7% of cases (Nunes et al., 2022a). This resulted in average recovery rates ranging from 29% to 63% for those accepting discounts, which is significantly higher than the average recovery rate of 6.1% in liquidation.

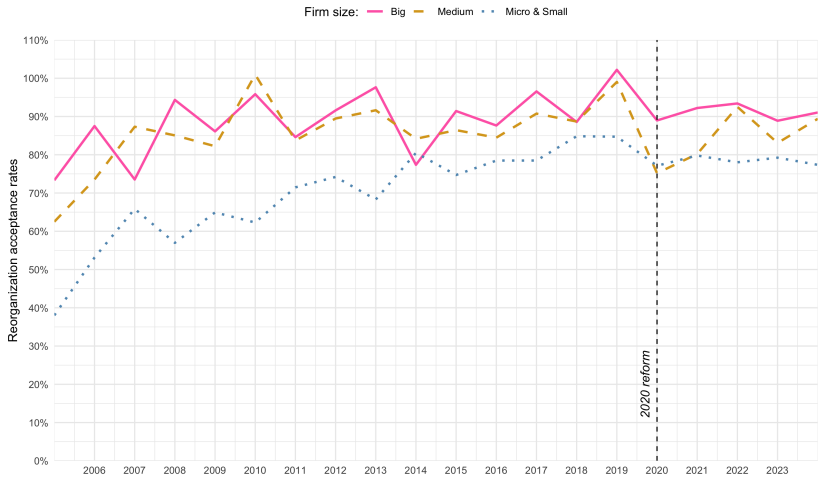


Figure 32. Reorganization acceptance rates by firm size and year

Notes: This figure reports judicial reorganization acceptance rates by firm-size category and year, using aggregate Serasa Experian data. Acceptance rates are calculated from aggregate counts of accepted reorganization requests relative to filings in the corresponding category and year. Rates should be interpreted cautiously because differences between the timing of filing and acceptance can produce rates above 100% when acceptances in a given year include cases filed in earlier years.

The 2020 reform introduced two changes that could potentially lead more small firms to opt for liquidation rather than reorganization. First, it expedited the liquidation process and made it less punitive by establishing the no-asset liquidation institute and imposing a hard limit of three years from the case's initiation on the duration of the debtor's financial obligations. Were this the only change, it should theoretically result in a decrease in the share of reorganization filings among all bankruptcy filings. Indeed, Figure 31 shows that this share fell in 2021 for firms of all sizes but increased again in 2022 and 2023.

As argued in Section 5.1, no-asset liquidations are primarily being utilized to resolve longstanding cases and may not have yet created sufficient incentives for many firms to prefer liquidation over reorganization. Additionally, even though liquidation closures increased in the post-reform period, the remaining stock of active liquidations is still old and court congestion remains high. Coupled with the enhancements made to the reorganization procedure and the pandemic-era focus on preserving firms, this has limited the extent to which the reform immediately shifted firms toward liquidation rather than reorganization.

The second change introduced by the reform is the preliminary examination. While this examination is not intended to assess a firm's viability, it facilitates the quick detection of fraud and abuses. If smaller firms were more likely to engage in such activities, we would expect to see a greater decrease in their reorganization acceptance rates compared to larger firms following the reform. However, Figure 32 indicates that acceptance rates have remained consistent across firms of all sizes.

There are three possible explanations for this consistency in acceptance rates. First, small firms may not be more prone to fraud or abuses compared to larger firms. Second, the practice of conducting a preliminary examination may not have become widespread enough to impact the entire country. Given the ongoing disagreements regarding the appropriateness of this practice, this is a plausible hypothesis. Third, the preliminary examination has two effects that lead acceptance rates in opposite directions. On one hand, it reduces acceptance rates by improving the screening of firms' intentions, distinguishing those genuinely seeking recovery from those merely attempting to delay debt payment. On the other hand, it increases acceptance rates because the experts conducting the screening help firms correct improper documentation, a common cause for rejecting filings. Former judge Daniel Carnio Costa discussed this in a 2018 opinion article, noting that expert intervention can address documentation issues effectively.[21] Even if small firms are more likely to abuse the reorganization process, they are also more likely to make documentation mistakes. Thus, the unchanged acceptance rates might mask a decrease in fraudulent filings and an increase in legitimate recovery efforts. For instance, Nunes et al. (2022a) found that acceptance rates increase when judges request preliminary examinations, both in specialized and non-specialized courts in São Paulo, with data spanning from 2010 to 2020. Across all state courts, acceptance rates rose from 67.3% to 82.8%, aligning more closely with the rates shown in Figure 32 for medium and large firms. If judges nationwide are still not consistently requesting preliminary examinations and this pattern holds across the country then wider adoption of the practice could reduce the gap between acceptance rates for firms of all sizes. This would underscore the preliminary examination's role as a mechanism for detecting fraud and errors, rather than efficiently allocating firms to appropriate bankruptcy procedures.

Finally, if creditors believe that the new rules will result in higher recovery rates in liquidation cases, they might also negotiate for better terms in reorganization plans and reject those that do not meet these improved conditions. Unfortunately, we do not have data on plan confirmations by firm size, only aggregate data. However, considering that the trends for firms of all sizes exhibit similar behavior, it is likely that the number of confirmations for small firms follows the same pattern as the aggregate data. Figure 33 shows that the confirmation rates of plans have actually increased after the reform. Confirmation rates are calculated by dividing the number of confirmations in a year by the number of acceptances two years prior[22].

Therefore, 2023 is the first year where we observe the confirmation of plans from reorganizations filed after the reform, while 2021 and 2022 saw the confirmation of plans from reorganizations filed before the reform, in 2019 and 2020, which may or may not have been subject to the new rules, making it difficult to assess their effect on confirmations. This is especially true considering the impact of the pandemic from 2020

[21] Costa, Daniel Carnio. 2018. "A perícia prévia em recuperação judicial de empresas – Fundamentos e aplicação prática." *Migalhas*. Available at: https://www.migalhas.com.br/coluna/insolvencia-em-foco/277594/a-pericia-previa-em-recuperacao-judicial-de-empresas---fundamentos-e-aplicacao-pratica.

[22] The median length of the period between acceptances and confirmations in São Paulo is 506 days, with most lasting from one to two years (Nunes et al. 2022a), and we assume this is true for other states as well

to 2022. Nonetheless, confirmation rates have fluctuated around 50% over the years, which is low for firms that should have a chance to reorganize. If creditors can properly evaluate firms as going concerns and smaller firms have lower values, then larger firms may exhibit confirmation rates above 50% while smaller firms may fall below this threshold. This would confirm that, even though small firms may be treated equally by judges, creditors would rather have them liquidated despite the low recovery rate of the liquidation procedure.

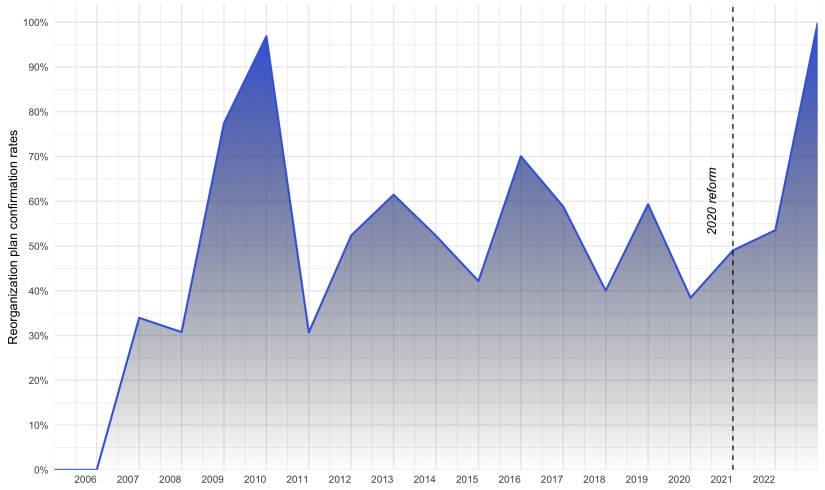


Figure 33. Reorganization plan confirmation rates by year

Notes: This figure reports aggregate reorganization plan confirmation rates by year, using Serasa Experian data; these data are not available disaggregated by firm size. Plan confirmation may occur years after filing, so the annual rate does not necessarily refer to plans confirmed for cases filed in the same year. The figure is therefore most informative about broad trends rather than immediate post-reform cohort effects.

This issue is not exclusive to Brazil. In the United States, only 21.27% of small businesses that filed for reorganization in 2004 successfully recovered (Lawton, 2013). Moreover, fewer creditors participated in these attempts than the American law envisioned, "chiefly because creditors in these smaller cases do not have claims large enough to warrant the time and money to participate actively in these cases" (Nadler, 2019). In 2005, Congress passed legislation to address this issue by streamlining the reorganization process and trying to prevent abuse. However, it did not succeed, leading to the passage of new legislation in 2019 aimed at helping small firms reorganize instead of increasing scrutiny. The Small Business Reorganization Act of 2019 (SBRA) amended Chapter 11[23] of the bankruptcy code to include Subchapter V. Among other changes, this amendment reduced the administrative costs of bankruptcy procedures for small firms, mandated the appointment of a trustee with business experience to

[23] Chapter 11 of the United States Bankruptcy Code defines the reorganization procedure for firms of all sizes

help debtors and creditors develop a consensual reorganization plan, and allowed the confirmation of plans even without majority voting.

To the best of our knowledge, there is no assessment of the causal effects of the new rules; similar to the Brazilian 2020 reform, this program is too recent and concurrent with the pandemic. However, there is preliminary evidence of its success. Bartlett and Morse (2021) indicate that the biggest challenge for small enterprises, those with 6 to 50 employees, during crises is managing committed costs, such as loan payments. This makes the SBRA an appropriate policy to assist them during downturns. Additionally, the 2022-2023 U.S. Trustee's[24] annual report indicates that "about three-quarters of Chapter 11 small business filers have elected to proceed under Subchapter V", totaling more than 6 400 cases from February 2020 to September 2023 (United States Department of Justice, 2024). Moreover, Table 7, adapted from the same report, shows that small firms' Subchapter V cases had more than double the confirmation rates and 60% of the dismissal rates of small firms' non-Subchapter V cases. This evidence suggests that rules making bankruptcy easier can appeal to small firms. For Brazil, this implies that a specific law offering small firms a cheaper and faster procedure may sway them from the expensive reorganization process. This could reduce time in bankruptcy, increase their chances of survival, and improve creditors' recovery rates.

Table 7. Outcomes of Chapter 11 small business filings, FY 2020–2023

Disposition	Non-Subchapter V (%)	Subchapter V (%)
Confirmed	22	55
Converted	23	12
Dismissed	56	33

Notes: This table reports the distribution of outcomes in U.S. Chapter 11 small business filings for fiscal years 2020–2023, separately for Subchapter V and non-Subchapter V cases. Values are percentages adapted from U.S. Trustee Program data. The table is used as a comparative benchmark for the discussion of simplified reorganization procedures for small businesses; the categories refer to U.S. bankruptcy outcomes and are not directly equivalent to Brazilian procedural classifications.

Since the 2005 reform, reorganization has increasingly become the preferred procedure for firms of all sizes, with judges generally accepting filings regardless of firm size. However, creditors may be more selective, denying reorganization for firms that likely should not have filed for it. If this is the case, an alternative procedure worth filing for would enhance efficiency. This could be a faster liquidation process with higher recovery rates, as aimed by the 2020 bankruptcy reform, or a specific reorganization procedure for small firms that is faster, simpler, and cheaper.

The Brazilian law has offered a special procedure for micro and small firms since 2005. These firms can present a special plan committing to a schedule of up to 36 monthly installments with a fixed interest rate. In this case, no creditor committee is assembled, but relevant creditors can oppose the plan. If they do, the case will turn into liquidation. This provision was amended in 2014 trying to make it more attractive.

[24] The U.S. Trustee program is part of the U.S. Department of Justice and is charged with ensuring compliance with bankruptcy laws and balancing the legitimate interests of all parties, including debtors, creditors, professionals, and others.

Before this change, only unsecured credits could enter the special plan, and the interest rate was fixed at 12% per year. The case would turn into liquidation if creditors holding more than half of those credits opposed the plan. After 2014, almost all credits, the same that can enter a regular reorganization plan, can be included and interest rates are set according the SELIC rate. Micro and small firms can also propose a reduction of their debts and, to turn the case into liquidation, it is enough if creditors holding more than half of the credits in any creditor class oppose the plan. The only amendment introduced by the 2020 reform to this plan was its extension to sole proprietor farmers with debts below a certain threshold, as discussed in Section 6.2, meaning there were no further changes for micro and small firms.

Had this change proved beneficial for both debtors and creditors, we should see an increase in confirmation rates since 2014. However, Figure 33 does not present any significant change from 2014 to 2021. Unless there were other changes in the same period worsening the reorganization procedure for larger firms, which is unlikely, this indicates that these amendments had little to no effect in helping micro and small firms to reorganize.

Efficiently allocating firms into appropriate procedures would mean that most firms filing for reorganization would have their plans accepted by creditors and subsequently confirmed by courts. However, we argued that micro and small firms likely have confirmation rates below 50%. One solution would be to create incentives for most of these firms to file for liquidation instead of reorganization. While the 2020 reform attempted to achieve this, we could not find aggregate effects in filings in the initial years following the reform.

Another solution would be to help firms propose a plan that reflects their low continuation value but still satisfies creditors. Designating a qualified trustee to assist debtors in negotiating a plan with their creditors, similar to the SBRA in the United States, would be a step in this direction. This is crucial because reorganization can still fail if key creditors oppose the plan.

6.2 *Reorganizations for sole proprietor farmers*

Figure 34 shows that reorganization rates increased significantly for firms in the agricultural sector from 2015 to 2016, maintaining levels around 90% since then. In contrast, reorganization rates for all other sectors remained below 70% during the same period. Why such a difference?

The majority of farms in Brazil are not formally recognized as businesses but rather as personal property. While this status does not impede their access to credit and other benefits, it creates a legal gray area regarding their inclusion under Brazilian bankruptcy law. This situation contrasts sharply with other sectors where every formal firm, regardless of size, can undoubtedly file for bankruptcy.

For many years, sole proprietor farmers negotiated directly with their creditors or relied on government policies during times of distress. However, in 2015, amidst an economic crisis that struck the country, some farmers filed for reorganization for the

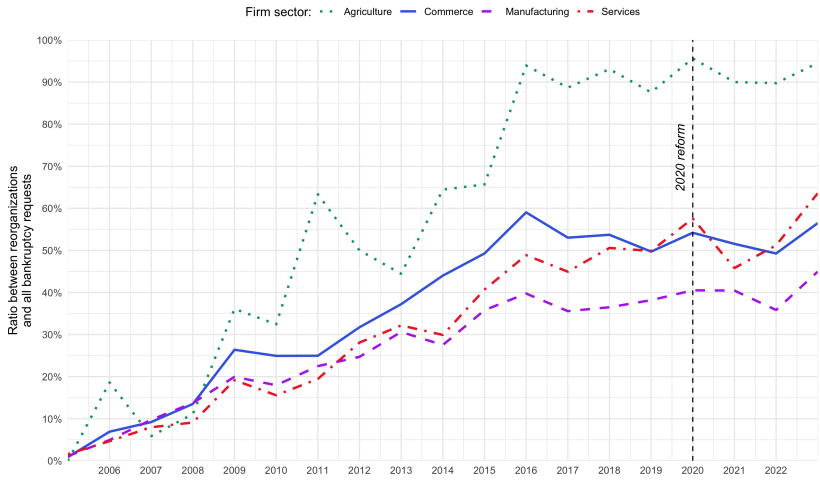


Figure 34. Share of reorganization filings by firm sector and year

Notes: This figure reports the share of reorganization filings in all bankruptcy filings by sector and year, using aggregate Serasa Experian data. The denominator is the sum of judicial reorganization and liquidation filings. The sectoral comparison is used to highlight the distinctive trajectory of the agricultural sector after legal uncertainty about access to reorganization for sole proprietor farmers began to diminish. The measure is aggregate and does not identify case-level outcomes.

first time. This unprecedented move was followed by others in subsequent years, eventually leading to the establishment of a jurisprudence that extended bankruptcy law protections to these farmers.

Notice in Figure 35, the higher variance in acceptance rates for the agricultural sector compared to other sectors until 2021. This variance is consistent with the history of an unclear legal situation for sole proprietor farmers. However, starting in 2021, acceptance rates for the agricultural sector appear to have stabilized, remaining above 100% for three consecutive years. This calculation is made by dividing the number of reorganization acceptances in a year by the number of filings in the same year, with rates above 100% indicating the acceptance of many older cases during those years.

The 2020 reform included specific rules for sole proprietor farmers in the reorganization chapter. These rules provided a clearer definition of who can file for reorganization, thereby facilitating the acceptance of filings from these businesses. Additionally, the reform extended one of the benefits available to small businesses to some sole proprietor farmers: those with total debt up to R$ 4.8 million can present a special reorganization plan under the same conditions offered to small firms. This provision has likely contributed to the more consistent acceptance rates observed since the reform.

A recent study from Serasa Experian has shown that reorganization filings from sole proprietor farmers increased significantly from 2022 to 2023, rising from 20 filings in 2022 to 127 in 2023 – a 535% increase.[25] While the study acknowledges the difficulties

[25] Serasa Experian. 2024. "Desafios no Campo: o aumento dos pedidos de Recuperação Judicial no agronegócio." Available at: https://www.serasaexperian.com.br/conteudos/agronegocio/desafios-no-campo-o-aumento-dos-pedidos-de-recuperacao-judicial-no-agronegocio/.

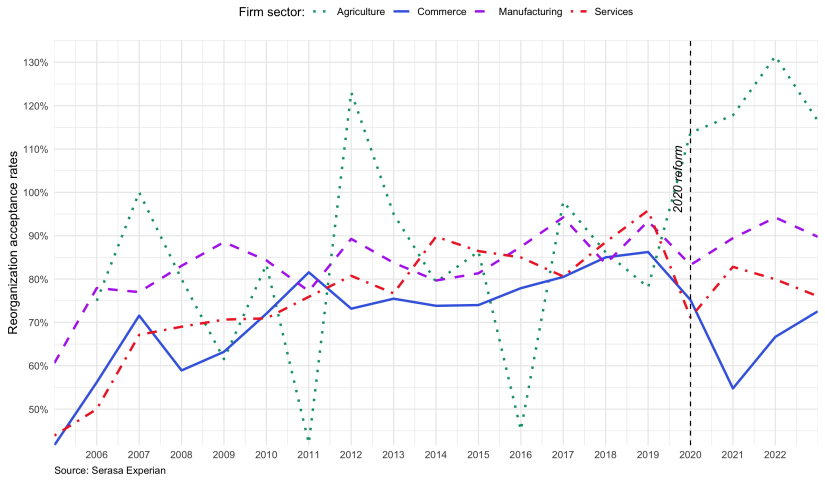


Figure 35. Reorganization acceptance rates by firm sector and year

Notes: This figure reports judicial reorganization acceptance rates by sector and year, using aggregate Serasa Experian data. Acceptance rates are calculated from aggregate counts of accepted reorganization requests relative to filings in the corresponding sector and year. Values above 100% can occur when acceptances in a year include cases filed in earlier years.

faced by the sector during these years, it attributes this surge to the 2020 reform, suggesting that the law's recent implementation means farmers are only now learning how to utilize this instrument. While the government and creditors are concerned that this may be an abuse of the new rules, some lawyers and farmers associations oppose this idea, arguing that extending the bankruptcy law to sole proprietor farmers is a solution to defaults in the sector.

While this debate is beyond the scope of this work, it highlights that the reform has already impacted the agricultural sector. The future evolution of the use of the new rules will largely depend on how the government and the credit market respond to this new situation.

7. Conclusions

This paper aims to discuss and investigate the results observed in the first years since the new bankruptcy law came into effect in Brazil, focusing on some of its main modifications across each of the three bankruptcy procedures. We discuss some important changes made in the 2020 reform in the procedures of liquidation, out-of-court reorganization, and reorganization, with the main focus on correcting inefficiencies identified in practice.

To empirically analyze the implementation of the innovations brought by the 2020 reform, we collected data from the São Paulo Court of Justice website on procedures filed in the state between 2005 and May 2026. From the texts of judges' decisions during the procedures, we identified mentions of legal provisions, as well as the outcomes of the procedures.

We find evidence that several of the reform's instruments have begun to appear in legal practice, although the patterns are uneven. In liquidation procedures, the no-asset liquidation institute is being used and the evidence points to a stronger closure margin after the reform, including the use of no-asset liquidation to close older proceedings. At the same time, the remaining stock of active cases is still old and court congestion remains relevant, so the evidence should not be read as a broad and immediate reduction in liquidation duration. Regarding out-of-court reorganization procedures, we find evidence of an increase in their use relative to judicial reorganization. Finally, regarding judicial reorganization procedures, the clearest implementation patterns concern tax debt, preliminary examination, and, to a lesser extent, DIP financing. In the case of tax debt, we identify an increase in citations to tax compliance certificates after the new tax-settlement and installment alternatives were included and after the pandemic's effects weakened. We interpret this as evidence that judges and tax authorities increasingly treat these certificates as procedurally relevant for reorganization. The STJ's decision by the end of 2023 explicitly citing the changes made by the reform to justify this obligation reinforces this interpretation. In the case of debtor-in-possession financing, there was an increase, although still small, in mentions of the articles of the law that deal with this issue, particularly for firms with larger debts. Preliminary examination has become a visible procedural tool in recent years. As for the request for anticipation of the stay period, use remains limited, but the observed cases suggest that the instrument initially served unusually complex cases and later moved closer to the average active reorganization. Finally, regarding the possibility of proposing an alternative recovery plan by creditors, only one case in the data referred to its use.

These results may yield benefits that extend beyond the immediate scope of the bankruptcy system and credit markets. Araújo and Costa (2025) shows that bankruptcy mechanisms can play a pivotal role in mitigating economic crises and alleviating the fiscal burden associated with counter-cyclical measures. By permitting distressed firms to default during unforeseen economic downturns without being permanently excluded from credit markets, such systems facilitate the reallocation of resources from less affected sectors to those experiencing severe impacts. This resource reallocation reduces the extent of government intervention needed to stabilize the economy. Moreover, by partially substituting private sector transfers for government transfers, the reliance on fiscal stimulus measures diminishes.

At least some of the changes of the 2020 reform improved the law in this direction. First, the emphasis on the fresh start of entrepreneurs of liquidated firms aiming to reduce cases' length from about a decade to a maximum of three years also aims to minimize the period they are excluded from credit markets. The post-reform evidence points to a stronger liquidation closure margin, and the introduction of no-asset liquidation has helped resolve long-standing cases that would otherwise have persisted. Second, the improvements in out-of-court reorganization procedures facilitated the access to the bankruptcy system while also alleviating the punishment for defaulting. Third, the new rules on the DIP financing help defaulting firms to stay in the credit market and, therefore, to prevent a significant reduction in their supply of products and services. Larger, highly indebted firms, which are those most likely to generate observable DIP-financing

discussions, may subsequently pass on these benefits to a broad base of consumers and suppliers if financing is actually obtained. Finally, the possibility to renegotiate tax credits through an offer-in-compromise acts as a direct form of government transfer to the firms most adversely affected by crises. It is a more efficient alternative to transfers targeting a general group of firms, regardless of the severity of their impact.

Exploiting an additional source of aggregate data by Serasa Experian, we notice that, since 2005, the preference for reorganization has increased substantially and consistently for firms of all sizes and sectors, raising questions about the efficiency of such choices. With decade-long cases and very low recovery rates, filing for liquidation often represents the worst option for both creditors and debtors. Although the 2020 reform aimed to expedite liquidation, it also enhanced the reorganization procedure for all firms. This, combined with the pandemic and various emergency policies specifically targeting small and medium-sized firms, continued to incentivize the use of reorganization over liquidation, even for firms with low continuation value, such as small firms.

When it comes to the confirmation of reorganization plans, we were unable to properly assess the effect of the reform for different firm sizes, as our data do not provide this information. Nevertheless, we argue that even with low recovery rates, creditors tend to deny the reorganization of small firms and accept those of larger firms. It is also still too early, at least with aggregate data, to determine any effect on the confirmation of plans, since it takes two to three years from the filing of a case for creditors to make a decision.

For filings and acceptances, we found no clear differential effect of the reform on firms of different sizes in the initial post-reform years. However, considering the improvements in the special plan offered to small firms, the following years may bring evidence of a differential effect for them, if any.

Additionally, sole proprietor farmers were not explicitly included in the bankruptcy law until the 2020 reform. From 2005 onward, they were in a legally gray area, and jurisprudence began to extend the benefits of the law to them starting with their first filings in 2015. Those with comparatively low debt can now also present the same special reorganization plan available to small firms, which does not require a creditor committee but still allows creditors the opportunity to oppose it. These changes have already demonstrated their impact. The clearer definitions provided by the reform appear to have resolved the legal ambiguities in the past three years, leading judges to consistently accept reorganization filings from sole proprietor farmers.

A recent study by Serasa Experian showed that reorganization filings from sole proprietor farmers increased by 535% from 2022 to 2023. While government and creditors express concern that these benefits may be subject to abuse, potentially harming the rural credit market, debtors celebrate the changes, arguing that they provide a solution to defaults in the sector.

All in all, the evidence found in this paper suggests a reform that is beginning to change legal practice through specific procedural instruments, particularly in liquidation closures, tax regularization, preliminary examination, and the legal treatment of sole proprietor farmers. However, this progress is uneven and has not yet translated

into a broad shift in filing patterns or into clear differential effects by firm size. One exception are the sole proprietor farmers, who were explicitly included in the bankruptcy law after years of uncertainty and are now seeking its protection. It is possible that, over time and with the consolidation of the legal adjustments following the 2020 reform, the analyzed indicators will evolve further as the effects of the pandemic subside and the government and rural creditors adapt to this new institutional environment. At the same time, the persistence of old active cases shows that duration, backlog, and court capacity remain central constraints. Continued research is therefore necessary to monitor whether these implementation patterns eventually translate into broader changes in insolvency outcomes, credit recovery, and resource reallocation.

Author contributions

Aloisio Araujo: Conceptualization; Methodology; Supervision; Funding acquisition; Project administration.
Rafael Ferreira: Conceptualization; Methodology; Writing – original draft.
Flávio Moraes: Conceptualization; Methodology; Project administration; Funding acquisition; Investigation; Formal analysis; Visualization; Writing – original draft; Writing – review & editing.
Pedro Peixoto: Conceptualization; Methodology; Investigation; Data curation; Validation; Formal analysis; Visualization; Writing – original draft; Writing – review & editing.

Conflicts of interest

The authors declare no conflicts of interest regarding this manuscript.

Ethics and data statement

This study relied exclusively on publicly available data and did not involve human participants or present any identifiable personal information. Therefore, ethics approval and informed consent were not required.

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Data availability: TJSP data used in this study are available from the corresponding author upon reasonable request, and docket records were extracted from https://esaj.tjsp.jus.br/esaj. CNJ, Serasa, and OBRE data supporting the findings of this study are available online through the following links: Serasa – https://www.serasaexperian.com.br/conteudos/indicadores-economicos/; *Justiça em Números* statistics panel – https://justica-em-numeros.cnj.jus.br/painel-estatisticas/; *Módulo de Produtividade Mensal* – https://paineis.cnj.jus.br/QvAJAXZfc/opendoc.htm?document=qvw_l%2FPainelCNJ.qvw&host=QVS%40neodimio03&anonymous=true&sheet=shPDPrincipal; OBRE – https://www.obre.net.br/dados.

Appendix: Detailed legal background on the 2020 reform

In this section, we discuss some of the main modifications prescribed by Law 14,112/2020 in each of the three bankruptcy procedures and their motivations. Appendix A.1 discusses liquidation procedures; Appendix A.2 discusses out-of-court reorganizations; and Appendix A.3 discusses reorganization procedures.

A.1 *Liquidations*

The liquidation procedure, outlined in Chapter V of Law 11,101/2005, primarily aims to liquidate economically unviable firms and facilitate the reallocation of productive resources, including capital and labor, to more productive uses. Typically initiated by a creditor claiming an overdue debt, the judge will declare bankruptcy if the debt exceeds 40 minimum monthly wages and there is no payment, deposit, or legally accepted defense by the debtor[28]. Although rare, debtors can also request their own liquidation ("*Auto-Falência*")[29]. Additionally, a liquidation procedure can be initiated during a reorganization process. Article 73 of the law allows the judge to convert reorganization into liquidation, either on the judge's own initiative or at the request of creditors, in cases such as the rejection of the debtor's reorganization plan or non-compliance with the approved plan.

Once bankruptcy is declared, the trustee appointed by the judge must assess both the assets and liabilities of the bankrupt firm. Subsequently, the trustee proceeds with the sale of the firm's assets. With the collected amount, after the payment of procedural costs, the creditors are paid according to the order of priority provided in the law[30].

Despite significant documented improvements following the introduction of Law 11,101 in February 2005, particularly in terms of the recovery rate of credits and the duration of bankruptcy procedures, liquidations in Brazil remained widely considered very ineffective and far from meeting the intended objectives of such a procedure. The slow pace of court proceedings adversely affects both creditors and debtors.

On the creditors' side, the slow pace of liquidation proceedings directly affects the expected recovery rate of credits. Once bankruptcy is declared, the debtor firm ceases operations. The delay in selling non-operational and deteriorating assets tends to erode the amount collected to pay creditors[31]. Consequently, liquidation is generally viewed by creditors–especially those with lower payment priority–as a very poor option. Even though creditors have the right to vote against the plan proposed by the debtor during a reorganization procedure if they disagree with the proposed conditions, the alternative to rejecting the plan is the conversion of reorganization into liquidation. The ineffectiveness of liquidation in recovering credits may lead creditors to accept less favorable conditions in the reorganization plan–believing it more likely to recover a larger amount with the firm still in operation–than they would if liquidation were a more viable option.

[28] Law 11,101/2005, Art. 94.

[29] Law 11,101/2005, Articles 105 to 107.

[30] Law 11,101/2005, Articles 83 and 84.

[31] See, for example, evidence on crowded bankruptcy courts and credit costs (Iverson, 2018; Müller, 2022).

Thus, the ineffectiveness of liquidation, by increasing the bargaining power of debtors in renegotiations, can directly affect the effectiveness of reorganization in recovering due credits.

On the debtors' side, the slow pace in liquidation procedures also generates significant impacts. Before the bankruptcy legislation reform in 2020, in case of non-payment of at least 50% of unsecured credits, the obligations of the individual debtor only ended five years after the closure of the bankruptcy – increasing to ten years in case of conviction for bankruptcy crimes. Moreover, if unable to reach such a minimum payment level, in practice, liquidation procedures became endless, with executions occurring as long as there were debts to be paid. This annihilates the possibility of an entrepreneur having a new chance to invest in new ventures and having a fresh start – a negative impact on the economy as a whole. Additionally, this makes liquidation also an unattractive alternative for the debtor, and it may help explain the historically low records of self-bankruptcy requests.

Law 14,112/2020 clearly recognizes these inefficiencies, first by amending Article 75, which opens the liquidation chapter and states the purposes of the procedure. While the pre-reform wording already referred to preserving and optimizing the productive use of the firm's assets, the reform made the provision more explicit by adding the prompt liquidation of unviable firms, efficient resource reallocation in the economy, and the fostering of entrepreneurship, including the quick return of the bankrupt entrepreneur to economic activity. In addition, the new paragraph 2 provides that liquidation procedures must contribute to the quick return of the entrepreneur and assets to the economy.

Specifically, the new law made some important changes in the legislation on the liquidation procedure at its different stages. In the pre-liquidation stage, it expanded the list of hypotheses in which the judge can declare bankruptcy during the reorganization procedure. The conversion of reorganization into liquidation is a measure of procedural economy, aiming to accelerate the return of the individual debtor to economic activity. Article 73 of Law 11,101/2005 included items V and VI, which provide, as possibilities for the conversion into liquidation, the non-compliance with agreed tax credit installments and the depletion of the firm's assets.

In the liquidation stage, important measures were included with a focus on increasing efficiency and procedural promptness. One of them concerns the flexibilization of aspects of the asset sale process during liquidation, aiming to reduce the deterioration of the values collected from their sales. Concerning this issue, the 2020 law included: (i) holding the auction regardless of whether market conditions are favorable or unfavorable; (ii) the non-dependence on the consolidation of the general creditor list; and (iii) the possibility of assistance from third parties, such as consultants, brokers, and auctioneers. Furthermore, the new law also defined a maximum period of 180 days for the sale of these assets, the inapplicability of the concept of a grossly inadequate price (*preço vil*)[32], and deadlines for three auction rounds at progressively lower minimum prices, reaching zero in the final round[33].

[32]The Brazilian Civil Procedure Code defines a grossly inadequate price as a bid below the minimum set by the judge or, if no minimum was set, less than half of the appraised value.

[33]All these topics are covered in Article 142 of Law 11,101/2005 after the 2020 reform.

Another measure of procedural promptness in the liquidation stage included by the new law concerns the expansion of the hypotheses for closing the liquidation procedure, now making it possible to close it in case of lack of assets of the bankrupt firm. Article 114-A created the possibility that, if no assets are found to be collected, or if the collected assets are insufficient for the procedural expenses, the trustee shall inform this fact to the judge, so that the liquidation can be closed more quickly. Once the deadline for creditors' manifestation has expired, the sale of the found assets is carried out by the trustee within a period established in the article and, subsequently, the liquidation is closed by the judge.

Finally, in the post-liquidation stage, the 2020 law focused on encouraging a faster reintegration of the bankrupt firm's owner into economic activity – the fresh start. It aimed to extinguish the obligations of the bankrupt in a much shorter period, enabling a quicker return to the market: within up to three years, counted from the declaration of bankruptcy by the judge, and no longer from the closing of the liquidation procedure.

A.2 *Out-of-court reorganizations*

Chapter VI of Law 11,101/2005 deals with the procedure for "out-of-court reorganization" (*Recuperação Extrajudicial*), a self-compositional modality for resolving the debtor's insolvency created by the 2005 law. It involves negotiation between the debtor and its creditors outside the courts. Upon meeting certain conditions specified in the law, particularly regarding the minimum percentage of creditor support, the debtor can request judicial approval of the reorganization plan resulting from this negotiation. This procedure is related to, but not identical to, the U.S. notion of prepackaged bankruptcy.

Article 161 stipulates that the proposal and negotiation of out-of-court reorganization must meet the same requirements as judicial reorganization[34], including the credits that can be subject to it. Upon the request for approval of the out-of-court reorganization plan, as well as after the granting of a judicial reorganization request, there is a stay period during which debt enforcement proceedings are suspended, and creditors cannot request the firm's liquidation[35], except for those not subject to the out-of-court reorganization[36]. The plan developed in out-of-court reorganization cannot treat creditors involved in the out-of-court negotiation differently from those not involved[37]. After receiving the request for approval, the judge allows creditors to present objections to the out-of-court reorganization plan within thirty days of the publication of a notice. After this period, the judge must rule on the objections within five days. In the case of non-approval of the plan, unlike judicial reorganization, the debtor does not face automatic conversion into liquidation. Furthermore, there is no time restriction for submitting a new out-of-court reorganization request following the non-approval of a previously submitted plan[38]. However, one existing restriction is the impossibility of combining a judicial reorganization request with an out-of-court reorganization; the debtor must await

[34] As provided in Article 48.
[35] Law 11,101/2005, Art. 163, Paragraph 8.
[36] Law 11,101/2005, Art. 161, Paragraph 4.
[37] Law 11,101/2005, Art. 161, Paragraph 2.
[38] Law 11,101/2005, Art. 164, Paragraph 8.

the pending decision, if any, on the judicial reorganization request before seeking approval for out-of-court reorganization.

The out-of-court reorganization procedure was reformed by Law 14,112/2020, with the main focus on making the procedure faster and encouraging greater use compared to the judicial reorganization procedure. One of the main changes was the reduction of the consent quorum required for the request to the judge for the approval of the out-of-court reorganization plan. Originally, Article 163 required support from creditors representing more than three-fifths of the total credits subject to the plan. The new wording reduced this minimum to more than half of the total credits.

Another flexibility introduced was the possibility of filing the request for the approval of the out-of-court reorganization plan with the consent of only one-third of the creditors, establishing the commitment to complete the minimum quorum within ninety days. If this quorum is not reached, the debtor is allowed to request the conversion of the procedure into judicial reorganization.

A modernization introduced in the reform was in the process of summoning creditors to present objections to the plan, now done through electronic notices, eliminating the requirement for publication of the notice in a widely circulated national newspaper or in the locations of the debtor's headquarters and branches.

Finally, we highlight as another relevant change in the 2020 law the possibility of including labor credits in the out-of-court reorganization plan, including those arising from work accidents. The law requires prior negotiation with the relevant unions before their inclusion. Before the reform, unlike judicial reorganization procedures, labor credits were not subject to out-of-court reorganization and could not be included in the negotiation plan.

A.3 *Reorganizations*

Reorganizations, introduced by the bankruptcy law reform of 2005 and partly inspired by Chapter 11 of the U.S. Bankruptcy Code, are an attempt to allow viable firms in financial distress to stay as going concerns, to restructure their financials and to overcome their liquidity and solvency problems. The law establishes a time frame for the procedure, as well as rules to be complied and instruments that can be used. The reform of 2020 attempted to improve existent provisions and introduced new ones. In A.3.1 we discuss the issues concerning the payment of tax debt during reorganization and the changes prescribed to deal with it; in A.3.2 we discuss the issues and changes concerning DIP financing; in A.3.3 we discuss the new instrument of preliminary examination; in A.3.4 we discuss the new instrument of early stay period; and finally in A.3.5 we discuss the new instrument of reorganization plan proposed by creditors.

A.3.1 *The payment of tax debt* Law 11,101/2005 considers tax credits as not subject to reorganization. It stipulates – in its article 57 – that, after the reorganization plan is approved by creditors, the judge can only grant reorganization to the debtor firm upon proof of tax compliance. The National Tax Code provides that tax liabilities may be suspended through full payment or through an installment plan – Law 5,172/1966, Art.

151.[39] Regarding installment plans, article 155-A stipulates that they will be granted in the form and conditions established by specific law. Additionally, paragraph 3 of the same article stipulates that a specific law will provide the conditions for installment plans for debtors in reorganization. At the time the 2005 bankruptcy law came into force, all entities could split their debts with the National Treasury in up to 60 installments, regardless of solvency or bankruptcy status – Law 10,522/2002, Art. 10.[40]

Since the 2005 bankruptcy law came into force, judges did not consistently require proof of tax compliance in practice. This issue was long relativized by the higher courts of Brazil, and jurisprudence indicated, contrary to the letter of the law, that this requirement was not necessary for granting reorganization.[41] This interpretation was reiterated in 2013 by the Special Court of the Superior Court of Justice (STJ)[42], the body responsible for resolving jurisprudential controversies of laws and legal norms below the country's constitution. The argument was essentially based on the view of an inherent contradiction between articles 47 and 57 of the 2005 bankruptcy law, which stated the purposes of reorganization and the requirement of tax compliance, respectively, as well as the lack of a specific law for companies in reorganization regarding installment plans for tax debts.

As materialized in this 2013 decision of the STJ, the argument was that article 47 of the bankruptcy law defines the objectives of a reorganization procedure and should guide its entire conduct. In free translation, this article specifies that: "The purpose of reorganization is to enable the overcoming of the debtor's economic and financial crisis, in order to allow the maintenance of the productive source, the employment of workers, and the interests of creditors, thus promoting the preservation of the firm, its social function, and the stimulation of economic activity." This article was often misinterpreted as if every reorganization should focus on the firm's survival as the final result of the procedure, regardless of being an economically viable and productive firm. In the case of unviable and unproductive firms, the best outcome for such a procedure, in terms of resource allocation – capital and labor – for the economy as a whole, would be the conversion into liquidation and the reallocation of these resources to more productive uses.

The second part of the argument focused on article 57 of the bankruptcy law, which deals with the requirement of proof of tax compliance for granting reorganization. The point raised in this 2013 STJ decision is that the National Tax Code gave companies in reorganization the right to a specific installment plan more suitable to their distressed reality[43], but there were no laws providing it. In the absence of this law, it was understood that this omission by the legislator should not constitute a burden on the reorganizing

[39] Law 5,172/1966, the Brazilian National Tax Code. Available at: https://www.planalto.gov.br/ccivil_03/leis/l5172compilado.htm.

[40] Law 10,522/2002. Available at: https://www.planalto.gov.br/ccivil_03/leis/2002/l10522.htm.

[41] For an example of this early practice, see Costa, Priscyla. 2006. "Justiça homologa plano de recuperação da Parmalat." *Consultor Jurídico*. Available at: https://www.conjur.com.br/2006-fev-03/justica_homologa_plano_recuperacao_parmalat/.

[42] Recurso Especial nº 1.187.404 – MT. Superior Tribunal de Justiça. Relator Sr. Ministro Luis Felipe Salomão. Corte Especial. Data de julgamento: 19/06/2013. Data de publicação: 21/08/2013.

[43] Law 5,172/1966, Art. 151, Item VI, and Art. 155-A, Paragraph 3.

firm. Therefore, it was decided that the lack of a tax compliance certificate should not prevent the granting of reorganization until this omission was corrected. The general installment rule[44], the only one available until then, was interpreted as insufficient, given the reality of the debt amounts at the time of reorganization. Thus, the jurisprudence of the higher courts saw an incompatibility between the tax compliance requirement, made by article 57, and the purpose of reorganization, described in article 47, as the unreasonableness of the available installment plan in the general law prevented the proof of tax compliance, and consequently, the recovery of the firm in crisis.

Besides this discussion about the relationship between articles 47 and 57, there was also a major discussion about judicial tax enforcement proceedings during reorganization. The original wording of article 6, paragraph 7, of the 2005 bankruptcy law prescribed that tax enforcement proceedings should not be suspended by the granting of reorganization, although they should be suspended by the installment of tax debts. The National Tax Code (Law 5,172/1966), since its enactment, also gave tax credits priority over all the debtor's assets and income, except for credits arising from labor relations and some classes of non-competitive credits not subject to reorganization. However, reorganization judges would prevent tax enforcement measures targeting assets essential to the firm's reorganization even without an installment plan[45]. The issue again turned on the interpretation that the available general installment plan prevented the debtor's recovery. Until a specific law on installment plans for companies in reorganization was created, the STJ admitted the possibility of suspending tax enforcement proceedings[46] until the reorganization judge assessed the viability of the enforcement measures or replaced constraining acts on assets essential to reorganization.

A specific law on installment plans for companies in reorganization was only enacted in 2014, with the promulgation of Law 13,043/2014,[47] which reformed Law 10,522/2002. It added Article 10-A, which allowed more installments than the general rule – 84 monthly and consecutive installments – and stipulated a minimum percentage of the debt value to be paid in each installment[48]. Even so, the practice in the first instance continued to prevent compliance with article 57 of the bankruptcy law and tax enforcement proceedings against companies in reorganization. The installment plan proposed by the new law, despite allowing a longer term than the general law, was still considered insufficient to allow the firm's recovery from the crisis. Furthermore, another argument was that this law was specific to the National Treasury, and the regularization of debts with State and Municipal Treasuries remained an open question. In higher courts, the discussion continued with divergent understandings between the First and

[44] Law 10,522/2002, Art. 10

[45] Discussion about this issue is present at Salomão, Luis Felipe; Santos, Paulo Penalva. Recuperação judicial, extrajudicial e falência: teoria e prática. Rio de Janeiro: Forense, 2012, p. 167-168.

[46] For contemporaneous discussion of the STJ's position, see Vital, Danilo. 2021. "Decisão do STJ mexe com riscos da recuperação judicial." *Consultor Jurídico*. Available at: https://www.conjur.com.br/2021-jun-26/decisao-stj-mexe-riscos-recuperacao-judicial/.

[47] Law 13,043/2014. Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l13043.htm.

[48] (I) from the 1st to the 12th installment: 0.666%; (II) from the 13th to the 24th installment: 1%; (III) from the 25th to the 83rd installment: 1.333%; (IV) 84th installment: remaining balance

Second Chambers of the STJ. The Second Chamber, specializing in Private Law, maintained the understanding of suspending tax enforcement proceedings until the reorganization judge decided on it. The First Chamber, specializing in Public Law, in a 2017 decision, authorized the continuation of tax enforcement proceedings in the absence of proof of payment of tax debts via the installment rule provided[49].

Among other changes, the bankruptcy law reform in December 2020 dissolved this divergence between the STJ Chambers by codifying the Second Chamber's jurisprudential understanding, resulting in the exclusion of paragraph 7 of article 6 of Law 11,101/2005 and the inclusion of paragraph 7-B. The new wording continued to prescribe that tax enforcement proceedings should not be suspended by the granting of reorganization but included (in free translation): "however, the competence of the reorganization judge to determine the replacement of constraining acts on capital assets essential for maintaining the business activity until the closure of reorganization, which will be implemented through judicial cooperation."

Before the bankruptcy law reform, in April 2020, Law 13,988/2020 was enacted,[50] creating the tax transaction mechanism (also known as offer-in-compromise) and making adjustments to Law 10,522/2002 – which deals with unpaid credits with federal agencies and entities, including installment possibilities. Aiming to reduce litigation and increase tax revenue, the tax transaction allowed any individual or firm alternative mechanisms for settling tax and non-tax debts with the federal government and its agencies. In 2022, new provisions were added by Law 14,375/2022,[51] which, among other benefits, increased the discount limit from 50% to 65% and the maximum number of installments from 84 to 120.

The 2020 bankruptcy law reform (Law 14,112/2020) also made important changes to Law 10,522/2002. It amended article 10-A, replacing the installment plan proposed in 2014 with two alternative plans. The first establishes a higher maximum number of installments than before – 120 monthly installments – and a lower minimum share of the total debt to be paid in each installment[52]. The second alternative involves offsetting up to 30% of total debt with credits the firm has with the government and paying the remaining in up to 84 installments with the same minimum shares of total debt as the first alternative. Micro and small firms received special treatment and were allowed plans 20% longer.

Law 14,112/2020 additionally added two other articles to Law 10,522/2002 – Art. 10-B and 10-C – that further facilitated payment by firms filing for reorganization. Article 10-B offered installment plans that would keep the total debt intact for specific tax debts the law previously did not allow to be included in any installment plan. As with article 10-A, micro and small firms were also allowed plans 20% longer. While both articles

[49] Recurso Especial nº 1.673.421 – RS. Superior Tribunal de Justiça. Relator Sr. Ministro Herman Benjamin. Segunda Turma. Data de julgamento: 17/10/2017. Data de publicação: 23/10/2017.

[50] Law 13,988/2020. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l13988.htm.

[51] Law 14,375/2022. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/lei/l14375.htm.

[52] (I) from 1st to 12th installment: 0.5%; (II) from 13th to 24th installment: 0.6%; (III) the remaining debt will be evenly distributed in up to 96 installments.

10-A and 10-B offered installment plans, article 10-C, on the other hand, allowed the reorganizing firm to propose a tax transaction, asking for discounts and a number of installments even higher than Law 13,988/2020 allowed for firms in general. By the time of its publication – before amendment by Law 14,375/2022 – any firm could ask for up to 50% discount and up to 84 installments, while firms under reorganization had limits of 70% and 120, respectively. Unlike the other two articles, micro and small firms under reorganization had no special benefit in this regard and, instead, were restricted to the benefits Law 13,988/2020 regularly offered them. These, however, were already higher than for bigger firms: up to 70% discounts and 145 installments.

Finally, along with the changes that facilitated access to the installment of tax liabilities and tax compliance certificates, the 2020 bankruptcy law reform included non-compliance with the agreed installment plan or tax transaction as a reason to convert reorganization into liquidation (Art. 73, Item V). In addition, the reform modified Law 10,522/2002 to include, in Art. 10-A, paragraph 4-A, item IV, the National Treasury's ability to request the conversion of reorganization into liquidation in cases of non-compliance with the installment plan.

A.3.2 *Financing the debtor during the reorganization* New resources are essential to provide liquidity and preserve the business, but they practically cease with the granting of the reorganization request, since potential financiers may be driven away by the risk of lending to companies that are already known to be in distress. For this reason, they need additional incentives and protections to accept this risk, and the bankruptcy legislation sought to provide incentives for new financing to be granted during reorganization. This type of financing is commonly referred to as DIP (debtor-in-possession) financing, a term originating from U.S. bankruptcy legislation that refers to a special type of protection for the financier during a reorganization procedure. In Brazil, jurisprudence has used the terms collaborative creditor, partner creditor, or strategic creditor to refer to this special type of financing for companies in reorganization.

In the original wording of Law 11,101/2005, this type of credit was provided for in article 67, which prescribed the possibility of priority treatment for credits contracted during reorganization, but only in the case of liquidation of the debtor firm. These credits include expenses with suppliers of goods or services and loan agreements.

The special treatment granted only in the case of the failure of the reorganization and the declaration of the debtor's liquidation is widely pointed out as one of the main factors for the low registration of this type of credit concession. Aiming to increase incentives for its concession, the 2020 reform amended the wording of article 67 to admit the possibility of including differentiated treatment for these creditors in the reorganization plan, provided that this financing is considered necessary for the maintenance of the firm's activities. The reform also included a new section in the law – containing six new articles (Art. 69-A to 69-F) – which sought to bring more guidelines and legal certainty to address this topic.

Article 69-A states that it is up to the judge, after hearing the Creditors' Committee, to analyze the feasibility of the proposed financing contracts during reorganization and deliberate on them. Article 69-B provides an additional guarantee to the financier: even

if the decision authorizing the financing is later reversed, the guarantees granted by the debtor and the priority treatment in case of liquidation are preserved for any amount already disbursed. Article 69-C, in turn, allows the judge to authorize the creation of a new guarantee on the debtor's assets in favor of the collaborative creditor, including current assets already offered as collateral, as long as the total amount collateralized does not exceed the asset's value. Article 69-D establishes that if reorganization is converted into liquidation before the credit is fully released, the contract with the partner creditor will be automatically terminated, protecting only the amount effectively disbursed until the conversion. Articles 69-E and 69-F state that there is no restriction on who can offer this type of financing or guarantee it, including other members of the economic group to which the debtor belongs, whether or not they are also in reorganization. Finally, the 2020 reform also brought a significant change for this mode of financing in the case of liquidation, listing this type of credit among the highest payment priorities (Article 84, Item I-B).

A.3.3 *Preliminary examination* Article 51-A, included in the bankruptcy law by the reform, addresses the possibility for the judge to request a preliminary examination (*constatação prévia*) of the operating conditions of the firm applying for reorganization and the regularity and completeness of the documents in the initial petition. This preliminary examination also includes the investigation of strong indications of fraudulent use of the reorganization procedure[53]. For this purpose, the law allows for the appointment of an expert, whose compensation will be determined after the presentation of the report, which must occur within five days of the appointment. The preliminary examination does not require the consent of the creditors or the debtor and can be conducted even before they are aware of it. Along with the decision to grant or deny reorganization, the debtor is notified of the result of the preliminary examination. However, the decision about granting or not reorganization cannot be based on the economic viability of the debtor.

Before the 2020 reform, the bankruptcy law did not provide for the possibility of a preliminary examination. However, its practice began through a jurisprudential construction (Costa and Fazan, 2019) which aimed to prevent the granting of reorganization to firms without the capacity to recover.[54] Based on the new powers granted to the judge by the 2015 Civil Procedure Code[55], specialized courts in São Paulo began to request expert assistance,[56] and this practice became part of the recommendations of the National Council of Justice.[57]

[53]The prerequisites for granting reorganization are described in Article 48 of Law 11,101/2005, and the documentation to be attached to the initial petition is described in Article 51

[54]For additional doctrinal discussion, see Pelati, Leonardo. 2023. "A constatação prévia em processos de recuperação judicial." *Migalhas*. Available at: https://www.migalhas.com.br/depeso/384619/a-constatacao-previa-em-processos-de-recuperacao-judicial.

[55]According to Article 156 of the CPC: The judge will be assisted by an expert when the proof of the fact depends on technical or scientific knowledge.

[56]Cecy, Mateus. 2021. "A constatação prévia na nova Lei de Recuperação Judicial." *Consultor Jurídico*. Available at: https://www.conjur.com.br/2021-jan-24/cecy-constatacao-previa-lei-recuperacao-judicial/.

[57]Conselho Nacional de Justiça. 2021. Recomendação No. 112, October 20, 2021. Available at: https://atos.cnj.jus.br/atos/detalhar/4196.

Criticism of this institute focused on the timeframe, which could be vital for the success of a recovery.[58] With no guidance from the law and, therefore, without a maximum deadline, there is evidence that the time between the recovery request and its granting increased in cases where the judge requested the preliminary examination.[59] However, the same discussion highlights that the chances of granting recovery increased.

A.3.4 *Early stay period* Emergency relief (tutela de urgência) is a provisional judicial measure used to prevent serious and difficult-to-repair damages resulting from procedural delay. Finding the presence of the plausibility of the right and the existence of the risk of irreparable damage, the judge can grant emergency relief sufficient and necessary for the procedure. It is provided for in article 300 of the Civil Procedure Code (Law 13,105/2015)[60] and was included by Law 14,112/2020 in two different articles of Law 11,101/2005.

In the specific case of a reorganization procedure, the effect of the emergency relief is the total or partial anticipation of the granting of the processing of the reorganization, suspending debt enforcement proceedings for a certain period. If the request is made after the filing of the reorganization request – prescribed in article 6, paragraph 12 – the suspension can be for up to 180 days – the stay period. If it is made before the filing of the reorganization request – prescribed in article 20-B, paragraph 1 – the judge can grant the suspension of debt enforcement proceedings for a period of 60 days for an attempt to negotiate with creditors before filing.

In certain circumstances, time is crucial to defining the possibility of resolving the company's insolvency situation in crisis. The 2020 reform sought to provide additional protection both to the company that filed for reorganization in court and to the company where the possibility of resolving insolvency arises before filing for reorganization, avoiding procedural costs and damage to its image.

A.3.5 *Reorganization plan proposed by creditors* In the original wording of Law 11,101/2005, the rejection of the debtor's reorganization plan by the general assembly of creditors resulted in the judge converting the case to liquidation. Following the 2020 amendments to the law, creditors can now propose an alternative plan.

After the reorganization request is granted by the judge, the debtor initially has a period of 60 days to present a reorganization plan. Upon receiving the debtor's plan, creditors have 30 days from the publication of the notice to submit objections. If any creditor objects, a general assembly of creditors must be convened and held within 180 days (stay period) from the granting of the reorganization[61], extendable for another 180 days. The first opportunity for creditors to present a reorganization plan arises if this period elapses without a decision on the debtor's plan. The second opportunity occurs

[58]Cecy, Mateus. 2021. "A constatação prévia na nova Lei de Recuperação Judicial." *Consultor Jurídico*. Available at: https://www.conjur.com.br/2021-jan-24/cecy-constatacao-previa-lei-recuperacao-judicial/.

[59]Sartori, Fernando Luiz Tegge. 2019. "Constatação prévia e o benefício ao processo de Recuperação Judicial." Marcos Martins Advogados. Available at: https://www.marcosmartins.adv.br/a-constatacao-previa-e-o-seu-beneficio-ao-processo-de-recuperacao-judicial/.

[60]Law 13,105/2015, the Brazilian Civil Procedure Code. Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm.

[61]Law 11,101/2005, Article 6, Paragraphs 4 and 4-A.

if the plan is rejected by the general assembly of creditors. In this second scenario, the trustee submits to a vote in the general assembly of creditors, by simple majority, the granting of 30 days for the presentation of a plan proposed by the creditors[62]. If no plan is proposed or approved by the creditors after the rejection of the debtor's plan, the judge must convert the reorganization into liquidation[63].

The creditors' plan may include provisions for the capitalization of credits, altering the control of the bankrupt firm, and even allowing the withdrawal of the debtor partner[64]. On the other hand, the creditors' plan must cumulatively meet six requirements to be put to a vote: (i) rejection of the debtor's plan; (ii) the alternative plan must meet the same requirements imposed on the debtor's plan, as provided by Article 56, Paragraph 6, which refers to the requirements of Article 53[65]; (iii) written support from more than 25% of the creditors subject to reorganization or more than 35% of the creditors present at the general assembly that rejected the debtor's plan; (iv) not impose new obligations on the shareholders and the debtor not provided by law or previously established contracts; (v) provide exemptions to personal guarantees given by natural persons in relation to the credits to be renewed from creditors who expressed written support; and (vi) the alternative plan must not imply a greater burden than liquidation[66].

[62] Law 11,101/2005, Article 56, Paragraphs 1, 4, 5.
[63] Law 11,101/2005, Article 56, Paragraph 8.
[64] Law 11,101/2005, Article 56, Paragraph 7.
[65] Law 11,101/2005, Article 56, Paragraph 6, Item II, and Article 53.
[66] Law 11,101/2005, Article 56, Paragraph 6.