

## RESTRUCTURING AND INSOLVENCY NEWSLETTER: UPDATES FROM THE 1<sup>ST</sup> BIMESTER OF 2025

**JUDICIAL REORGANIZATION HITS HISTORIC  
RECORD IN 2024, ACCORDING TO SERASA**

In 2024, Brazil recorded 2,273 reorganization petitions, according to the Bankruptcy and Judicial Reorganization Indicator from Serasa Experian – the highest number since the beginning of the survey conducted by the institution in 2014. This total represents an increase of 61.8% compared to 2023. The only year that came close to this scenario was 2016, when 1,863 petitions were registered.

When analyzing the data by company size, it was found that the situation was even more critical for Micro and Small Businesses, which filed the highest number of petitions, namely 1,676, an increase of 78.4% compared to the previous year. Medium and large companies ranked second, having filed 416 and 181 petitions, respectively.

Looking at the breakdown by sectors, companies in the Services sector were the ones that most filed for reorganization in 2024, totaling 928 petitions, followed by the Commerce sector, which recorded 575 petitions.

In contrast, in the same year, there were 949 bankruptcy petitions filed by companies, representing a decrease of 3.5% compared to the previous year. Micro and Small Businesses were the ones that most filed for bankruptcy, totaling 578 petitions, followed by medium-sized companies with 189 petitions and large companies with 182.

The Services sector had the highest number of bankruptcy filings, with 416 petitions, followed by Commerce with 292, Industry with 238, and the Primary sector, which had 3 petitions.

In 2024, the increase in the number of reorganization petitions can be explained by a combination of economic and social factors, including persistently high interest rates, high inflation, and the slowdown of economic activity, which have pressured many companies to seek alternatives to avoid bankruptcy. Greater awareness among companies of the new legal procedures for businesses in crisis also contributed to the rise in petitions.

Moreover, political uncertainty and difficulties in supply chains have worsened the financial situation across various sectors. Economists and legal experts predict that, in 2025, the number of judicial reorganizations may continue to rise, especially if economic conditions do not improve and if companies are unable to adapt quickly to new market demands. This trend could also be accelerated by the need to restructure accumulated debts and find more viable solutions for business sustainability.

### ARBITRATION CLAUSES DO NOT APPLY TO DIP FINANCING CONTRACTS

On December 19, 2024, Justice Raul Araujo from the Superior Court of Justice (STJ in Portuguese) ruled on a Conflict of Jurisdiction, under case number 203888, between the Court of the 1<sup>st</sup> Civil Court of Carpina, state of Pernambuco, and the Court of the 2<sup>nd</sup> Business and Arbitration Conflicts Court of São Paulo, involving the validity of clauses in a commissioned industrialization contract signed between companies undergoing judicial reorganization, with an arbitration agreement designating the São Paulo Arbitration Chamber as venue.

The Justice-Rapporteur concluded that the 1<sup>st</sup> Civil Court of Carpina/PE had jurisdiction to decide on the termination of the contract, as the execution and approval of the DIP Financing were linked to the recovery court. The justice also emphasized the importance of judicial cooperation between courts to regulate other aspects of the dispute.

It is important to note that issues involving arbitration and judicial reorganization are of great relevance and spark significant debate. Previously, the Superior Court of Justice had already settled an opinion on the sovereignty of

decisions made by each court. The decision on the conflict of jurisdiction is an innovation in this regard and, for now, represents a standalone opinion, as the arbitrator or the arbitration tribunal are the ones to determine whether one of the parties is to blame, whether there is noncompliance, and whether there has been harm to any of the parties under the contract.

Thus, the topic will certainly be debated again soon.



### VALIDITY OF DISCOUNT FOR LABOR CREDITORS IN JUDICIAL REORGANIZATION

The Superior Court of Justice's judgment of the judicial reorganization plan of *Concreserv* examines the legality of creating subclasses for labor creditors and applying a 90% discount for credits greater than 25 minimum wages, questioning whether this differentiation respects the principles of equality and parity. The debate highlights the tension between protecting labor rights and ensuring the economic viability of a company in crisis.

The company, seeking financial restructuring, presented this proposal at the Creditors' Meeting, which approved it by a majority vote, sparking controversy surrounding the legality of this decision. The appellant opposed to the plan, arguing that creating subclasses and applying the discount violated the legislation, particularly the principles of equality and parity of treatment established in the Judicial Reorganization Law (Brazilian Law No. 11,101/05). São Paulo Court of Justice accepted this argument, determining that applying discounts to labor credits was not allowed.

The Justice-Rapporteur of the Superior Court of Justice, Antonio Carlos Ferreira, in the judgment of Special Appeal No. 2107582/SP (2023/0393196-1), decided to uphold the position of São Paulo Court of Justice, given that the clause of the plan in question compromises workers' rights. On the other hand, Justice João Otávio de Noronha dissented, arguing that the creation of subclasses based on objective criteria could be valid to ensure the economic viability of the company, suggesting that all stakeholders, including workers, should share the burdens of the crisis.

The judgment was interrupted by a request for further analysis from Justice Raul Araújo, leaving open questions about the legitimacy of creating subclasses and applying discounts in judicial reorganization cases, with significant implications for labor rights and the reorganization of companies.

### TJSP CANCELS "STALKING HORSE" AUCTION IN JUDICIAL REORGANIZATION OF OSWALDO CRUZ GROUP

The 2<sup>nd</sup> Reserved Chamber of Business Law of São Paulo Court of Justice (TJSP in Portuguese), when judging Interlocutory Appeal No. 2262907-56.2024.8.26.0000, annulled the "stalking horse" auction in the judicial reorganization case of Oswaldo Cruz Educational Group, arguing that this method, which benefits the first bidder, is not the most advantageous, given the presence of multiple interested parties.

The decision ordered that a regular auction be held for a piece of property of 11,6 thousand m<sup>2</sup>, valued at R\$ 104 million, contrary to the preference of developers and funds wishing to acquire the asset.

Although the "stalking horse" method was imported from American law and still lacks specific regulation in Brazil, it has been increasingly used, with a rise in the number of judicial reorganizations employing it.

However, the ruling in Oswaldo Cruz case highlighted that a traditional auction could lead to a higher valuation of the asset due to competition. The court's analysis indicated that, for assets like real estate, a more comprehensive evaluation with more participants could generate higher offers, while also setting limits on the use of the "stalking horse" method, preventing it from being employed as a tool that could distort the sale process.

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