TozziniFreire.

Restructuring and Insolvency

5th Edition - 2026

This is an informative newsletter
produced by the **Restructuring and Insolvency**
practice of TozziniFreire Advogados.

INDEX

Click at the topic of your interest and browse through the content

Habitual debtors are barred from filing for court-supervised reorganization

On January 8, 2026, the President of the Republic enacted Supplementary Law No. 225/2026, establishing the Taxpayer Bill of Rights and setting forth general rules regarding the rights, guarantees, duties, and procedures applicable to the legal relationship between the taxpayer or liable party and the tax administration.

Article 13, I, (d) of said law provides that a habitual debtor—defined as a taxpayer with repeated, substantial, and intentional tax delinquency, with debts equal to or exceeding R$ 15 million and representing more than 100% of their known assets—may not file for court-supervised reorganization, nor continue with an existing filing, leading to the conversion of the court-supervised reorganization into bankruptcy at the request of the relevant tax court.

This prohibition is grounded in the very purpose of the court-supervised reorganization, which is not intended to protect economic agents that distort the tax and competitive system, but rather to facilitate the overcoming of temporary crises, ensuring the company's social function, the preservation of jobs, and future tax revenue collection.

Structural and unjustified noncompliance, when it becomes a recurring practice, violates the principle of objective good faith, which is a fundamental element of the court-supervised reorganization regime. Thus, the law seeks to ensure that court-supervised reorganization is used only by those who truly need support to reorganize their activities, rather than by those who use nonpayment as an economic strategy.

Thus, by preventing habitual debtors from accessing court-supervised reorganization, the legislation seeks to reinforce the integrity of the tax and competitive system, ensuring that court-supervised reorganization functions as an effective tool for companies facing temporary difficulties, rather than as a recourse for those who misuse its purpose.

Tax Authority may file for company's bankruptcy following an unsuccessful enforcement proceeding

In the ruling of Special Appeal (Resp) No. 2196073/SE (2025/0036277-4), on February 11, 2016, the Third Panel of the Superior Court of Justice (STJ in Portuguese) held that the Tax Authority has the right to file for a company's bankruptcy following an unsuccessful enforcement proceeding.

The case began with a tax enforcement proceeding filed by the National Treasury against a business entity, aiming to collect debts registered as overdue tax liabilities exceeding R$ 12 million; despite the measures undertaken, no sufficient assets were identified to satisfy the debt.

Following the unsuccessful enforcement, the National Treasury filed a bankruptcy petition against the company, but the case was dismissed without prejudice by the 14thCivil Court of the District of Aracaju/SE, on the grounds that the Treasury lacked standing to file such a claim, as bankruptcy proceedings were deemed an improper means of collecting tax credits.

As the Court of Appeals upheld the lower court's decision, the public entity appealed to the Superior Court of Justice, which, in turn, emphasized – by means of the opinion of Reporting Justice Nancy Andrighi – that Articles 7-A and 73 of the Bankruptcy and Reorganization Law, by establishing the incident for the classification of public claims, reinforce the tax authority's standing to participate in bankruptcy proceedings.

According to the Justice, it would be contradictory not to recognize the National Treasury's standing to file for bankruptcy, given that the public entity is allowed to participate in bankruptcy proceedings initiated by third parties.

Furthermore, she emphasized that, with the inclusion of Article 97, IV, of the Bankruptcy and Reorganization Law, standing was granted to any creditor to file for bankruptcy, without distinction between public and private creditors; additionally, Article 94, par. 2, of the same law recognizes that all claims admissible in bankruptcy proceedings provide grounds for a decree of bankruptcy, including public claims, in accordance with Article 83, III, of the law.

Finally, she pointed out that the premise that the Treasury cannot request bankruptcy because it has tax enforcement as its own privileged collection instrument cannot be accepted, as it would turn such an advantage into a procedural impediment, placing the public entity at a disadvantage in relation to private creditors.

Accordingly, the Reporting Justice concluded that, in light of the frustrated tax execution, the bankruptcy petition is not only legitimate but becomes essential and beneficial for the satisfaction of public claims, providing more effective procedural tools, allowing for the prevention of intentional non-payment of tax obligations and the fight against bad-faith practices and fraud.

On February 24, 2026, the decision rendered by the Third Panel was challenged by the company through a motion for clarification (*embargos de declaração*), which is currently pending judgment.

Brazil ends 2025 with a record number of court-supervised reorganizations

Brazil closed 2025 with a record of 5,680 companies under court-supervised reorganization, according to data from the consulting firm RGF. This phenomenon reflects a significant increase of 24.3% compared to the previous year and a growth of 7.5% in relation to the third quarter of 2025. This scenario highlights the challenges that many companies face in an unstable and competitive economic environment.

The Southeast region accounts for nearly half of the cases, with 47% of reorganizations occurring in this region, and São Paulo being the primary driver of this statistic. São Paulo alone accounts for 1,315 companies (Corporate Taxpayer IDs - CNPJs) in court-supervised reorganization, representing 23.15% of the national total. This concentration highlights the magnitude of the crisis in one of the country's most important economic centers.

In the last quarter of 2025, 510 new court-supervised reorganization filings were recorded, totaling approximately R$ 40 billion in accumulated debt. This scenario makes debt renegotiation an even greater challenge for companies, which struggle to remain viable in an inflationary environment that further pressures their operating costs.

Out of the total number of companies that concluded their reorganization proceedings in the last quarter, 29% ultimately went into bankruptcy. In contrast, 71% were able to resume their operations without court supervision, indicating that, although it is a challenging process, recovery is possible for many.

Azul concludes Chapter 11 proceedings in the United States

On January 20, 2026, Azul Linhas Aéreas announced the completion of its financial restructuring process and its exit from Chapter 11, the equivalent of court-supervised reorganization in the United States. This milestone represents a significant moment for the company, which not only reorganized its finances but also attracted substantial investments totaling US$ 850 million.

The restructuring plan, confirmed by the U.S. Court, was designed to strengthen the company's financial structure and allow for more sustainable operation in the long term. In an official statement, John Rodgerson, Azul's CEO, highlighted that the restructuring was completed in less than nine months and that the company is now positioned to face the future with a stronger financial foundation.

One of the main elements of the restructuring plan was the reduction of the company's debt and lease obligations, which were decreased by approximately US$ 2.5 billion. This restructuring not only relieved the financial pressure on Azul Linhas Aéreas but also enabled a strategic realignment that will benefit the company in the long term.

Part of the new funding will come from two American aviation giants, American Airlines and United Airlines, which committed US$ 100 million each in exchange for shares in Azul. In addition, Azul Linhas Aéreas entered into additional agreements with existing creditors for an extra US$ 100 million investment, further strengthening its financial position.

The combination of new investments, debt reduction, and the support of strategic partners positions Azul favorably for future responsible growth. The company currently operates around 800 daily flights, serving approximately 32 million customers in 2025, demonstrating its relevance in the national aviation scene.

The news of the emergence from Chapter 11 had a positive impact on Azul's shares, which experienced strong appreciation in the market. On January 23, 2026, the company's shares were up about 2% around 2:00 PM,

following an appreciation that exceeded 40% at the start of the trading session. This market reaction reflects investors' renewed confidence in the airline's future.

With the successful completion of its restructuring process, Azul Linhas Aéreas not only reestablishes itself as a key player in the aviation industry but also demonstrates the sector's capacity for recovery and adaptation in the face of financial challenges.

It is worth noting that the financial coordinators of the capital markets transactions in Azul's restructuring process were advised, under Brazilian law, by TozziniFreire Advogados.

Superior Court of Justice sets precedent on proceeds from the sale of assets in a bankruptcy context

In the judgment of Special Appeal (REsp) No. 2220675/SP (2023/0098908-2), the Third Panel of the Superior Court of Justice issued an important decision regarding the allocation of proceeds obtained from the sale of assets of a company under court-supervised reorganization, within a bankruptcy context. The ruling clarifies that the deposit of the amount obtained from the sale of these assets, as provided for in the reorganization plan, is not considered payment to the creditors subject to the bankruptcy proceedings. Thus, if bankruptcy is declared before these amounts are withdrawn by the creditors, they must be collected to form part of the bankruptcy estate.

The case in question involved a company that, after undergoing reorganization proceedings, was declared bankrupt. Two creditors subject to the proceedings requested that the amounts resulting from the sale of the company's assets during the reorganization be used to settle their claims, arguing that they were merely awaiting the submission of a payment plan. However, the court denied the request, holding that the amounts were part of the bankruptcy estate and should be allocated for the payment of all creditors, in accordance with Article 83 of the Bankruptcy and Reorganization Law.

After the decision was upheld by the Court of Justice of São Paulo (TJSP in Portuguese), an appeal was filed with the Superior Court of Justice (STJ), in which one of the creditors argued that the curt deposits resulting from the sale of assets during the reorganization should be considered as payment.

The Reporting Justice, Ricardo Villas Bôas Cueva, distinguished court-supervised reorganization from payment by consignment, since the company under reorganization proposes a plan aimed at renegotiating its debts to satisfy all creditors and continue its operations.

The Justice highlighted that the disposal of assets during court-supervised reorganization follows a specific procedure, established in Articles 142 and 143 of the Bankruptcy and Reorganization Law. According to the Reporting Justice, the deposit of funds into court does not imply the discharge of debts, given that potential challenges must still be adjudicated and the specific allocation of each amount must still be defined. Furthermore, there was a

court order for the funds to be deposited in order to prevent their dissipation and to guarantee the future payment of all qualified creditors, while respecting the individualization of payments.

He further clarified that, at the time of the deposit, the beneficiary creditors and the amounts to be allocated to them were not known, precluding the conclusion that this act resulted in a payment. Thus, as bankruptcy was declared while the payment procedures were still being carried out, the cash funds must be included in the bankruptcy estate.

Justice Cueva emphasized that, in court-supervised reorganization, all creditors hold the expectation of receiving their payments, based on the presumption that the debtor will be able to settle both bankruptcy and first priority claims. However, with the declaration of bankruptcy, the restructuring plan is automatically terminated, and all creditors become dependent on the liquidation of assets to receive their claims.

Finally, he emphasized that the only vested right that must be preserved is the disposal of the asset, with the proceeds deposited into court, as provided for in Article 74 of the Bankruptcy and Reorganization Law. Bankruptcy declared during the court supervision period implies the reconstitution of the creditors' rights and guarantees, setting aside the novation that occurred during the court-supervised reorganization.

Superior Court of Justice decides: the claim of a creditor not listed in an out-of-court reorganization will not be subject to the effects of the Plan

In the judgment of Special Appeal REsp 2234939/RJ, the Third Panel of the Superior Court of Justice (STJ) unanimously decided that the novation of claims provided for in an out-of-court reorganization plan applies only to creditors who participated in the reorganization process. Thus, those who were not listed in the plan will not be subject to its effects.

The case at hand involved an applicant company that did not include a specific creditor in its list of creditors during the out-of--court reorganization process. The creditor, in turn, continued to collect its claim normally, disregarding the effects of the confirmed plan. Dissatisfied, the company sought a court order to align the claim with the conditions of its plan. However, on March 3, 2026, the Superior Court of Justice reaffirmed the decision rendered by the Court of Justice of Rio de Janeiro and confirmed the legal thesis established in the judgment of the Special Appeal REsp 2197328/SE, reported by Justice Moura Ribeiro, which upholds that it is not possible to recognize the novation for creditors who were not part of the restructuring plan.

The vote emphasized that, unlike court-supervised reorganization, out-of-court reorganization does not have a universal nature; thus, its effects are restricted to the creditors who expressly adhered to the restructuring plan.

Thus, the Superior Court of Justice denied the appeal of the company under reorganization, allowing the creditor to proceed with the enforcement of its claim normally, without the limitations sought by the debtor company.

RESPONSIBLE FOR THE NEWSLETTER:

Gabriela Martines

CONTRIBUTED TO THIS NEWSLETTER:

Victoria de Azevedo Torres Silveira | Senior Lawyer