

WHAT IS E-DISCOVERY, AND WHAT IS ITS IMPACT ON FINTECHS?

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In the ever-expanding information age, companies immerse themselves in an ocean of data, with sources multiplying at every moment. In this context, understanding, locating, collecting, and preserving this information (“data”) becomes a crucial need, especially in times of crisis and in the face of the possibility of filing lawsuits, preparatory and arbitration proceedings, or regulatory requirements.

Electronic E-Discovery (or “E-Discovery”) is at the heart of this challenge, a field that has become central at the intersection of technology and lawsuits. Below is the text on the importance of E-Discovery and its application in the world of fintech:

1

INTRODUCTION/DEFINITION

E-Discovery is the name given to the set of practices that involves searching, researching, locating, and obtaining electronic data and information to use as evidence in judicial or investigative proceedings.

In this process, the information gathered is called Electronically Stored Information (ESI). They can originate and be organized in diverse digital formats, such as texts, emails, drawings, spreadsheets, sounds, images, videos, messages, attachments, and websites, among many others.

E-Discovery allows parties involved in assessments, claims, and litigation to obtain evidence that would normally not be accessible. This tool can benefit litigants who seek to understand the activities of large companies and those who seek consensual solutions to their conflicts, realistically assessing the strength of their positions.

E-Discovery is already part of the pre-trial phase in the US civil justice system, where the parties reveal relevant evidence and data to clarify the case. At this time, the lawyers carry out most of the procedures for producing evidence, accompanied by those who confer officiality on the acts.

In Brazil, although it is not yet usual, given the possibility of preparatory and anticipatory measures of evidence, in addition to the opportunity to enter procedural legal transactions that can establish between the parties, for example, a pre-procedural phase for mutual disclosure of evidence, E-Discovery can become decisive in some situations.

In the Brazilian legal system, even without specific regulation, the relevance of E-Discovery is amplified in sectors such as fintechs, where technology plays a crucial role. In this sense, using E-Discovery practices can represent a mechanism of negotiation transparency, providing the collaborator with an overview of the investigations so that he can have a real notion of how much his information is worth and how important it is for the authorities.

In addition to its role in litigious claims, the broad definition of E-Discovery can encompass other extrajudicial and/or administrative procedures. Therefore, the subject is relevant for companies concerned with protecting the integrity of their businesses in a digital scenario.

It is observed that a substantial portion of the expenses related to an investigation are linked to collecting and presenting electronic evidence. Such cost implications become even more critical when employing E-Discovery, particularly when parties must identify,

retrieve, process, and analyze a substantial volume of electronically stored documents, often with strict adherence to deadlines.

As the amount and complexity of electronic data grow exponentially, understanding and adopting procedures that make E-Discovery becomes essential for procedural effectiveness, efficiency, and compliance purposes.

2

IMPACT OF E-DISCOVERY ON FINTECHS

The practical performance of E-Discovery transcends the category of companies, affecting businesses of all sizes and segments in the face of litigious circumstances that require the presentation of electronic evidence. This influence extends to multinationals operating in Brazil and to local companies with global operations, reflecting the imperative need to be careful with local regulations amid informational risks.

If, on the one hand, it is a very important tool given the company's responsibility to be vigilant and watch over its operations, on the other hand, it can bring serious legal risks, for example, concerning privacy issues and labor matters, in addition to possible risks for the misuse or careless use.

E-Discovery can reduce the time required to locate information internally, mitigating risks and reducing costs and expenses that are not foreseen.

By equipping Information Technology and Legal departments with a holistic understanding of electronic information sources and types, fintechs can identify, extract, and present data quickly and efficiently. This reinforcement expands to ensure prompt responses to planned or unforeseen situations, including internal and external audits, also avoiding mistakes that could result in the invalidation of collected evidence, in addition to suspicions of evidence manipulation.

Indeed, the decision to adopt or not an E-Discovery solution depends on a prior analysis of the litigious and regulatory risks in the context of the company's sector of activity, the volume of information involved, the structure and culture of the company itself, and especially, applicable laws and regulations on a case-by-case basis.

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