

# JUDICIAL RECOVERY & BANKRUPTCY IN THE FINTECHS SCENARIO

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Fintechs have played a fundamental role in the evolution of financial services, leading digital transformation, and offering solutions comparable to more traditional institutions.

The digital characteristic of service distribution is a distinctive feature of Fintech, which allows these companies to reduce operational costs by offering digital products and financial solutions, as well as innovative and accessible services, such as credit facilitation, digital accounts without maintenance costs, and credit cards, credit without an annual fee. The efficiency, accessibility, and transparency that Fintechs offer quickly won the preference of a public saturated with the bureaucracy, queues, and complexities typical of traditional financial institutions.

The rapid growth of Fintechs in Brazil and their agile nature expose them to specific risks and challenges. Accelerated technological development, intense competition, and regulatory changes can lead the most promising Fintechs to face financial difficulties and discontinuity of their operations.

In this article, we will explore in detail the bankruptcy and judicial recovery scenarios in the context of Fintech:

### JUDICIAL/EXTRAJUDICIAL RECOVERY & BANKRUPTCY

Brazilian legislation establishes tools that allow companies to deal with financial difficulties fairly and effectively, enabling the resumption of business and, in some cases, a return to the market, as provided in Law No. 11,101 of February 9, 2005, known as “Bankruptcy Law” which was later amended by Law No. 14,112/2020.

Various reasons can lead a company to suspend its activities or face closure temporarily. The decision on the approach to be adopted, whether judicial or extrajudicial Recovery or bankruptcy, is not trivial and requires professional guidance.

Judicial recovery (equivalent to Chapter 11 of US Bankruptcy Code) emerges as a resource when there are real prospects that the company can resume its activities in the future, even in the face of current difficulties. In a simplified way, judicial recovery seeks to avoid a company’s bankruptcy for the benefit of the parties involved, whether partners, investors, or creditors, including workers, suppliers, and customers.

In this procedure, the company receives permission to renegotiate part of its debts with its creditors to facilitate a systematic reorganization and restructuring of the company, avoiding isolated enforcement actions. This renegotiation can occur in two ways:

## JUDICIAL

Negotiation involving the Judiciary to draw up a recovery plan for debt refinancing that should address the deficiencies that led the company to the crisis and propose solutions. During this process, creditors can demand changes to the recovery plan. If the plan is accepted, the Court suspends collection actions for 180 days. However, if the debtors do not take the modifications proposed by the creditors, bankruptcy may be declared by the Court.

## EXTRAJUDICIAL

Direct negotiation between debtor(s) and creditor(s), which takes place without the intervention or participation of the Judiciary. The organization itself convenes its creditors for collective negotiation, in which each party's rights, payment conditions, and obligations are defined. Finally, to formalize the negotiation, the agreement must be presented for approval to the Judiciary.

Companies with valid registrations in the National Register of Legal Entities (CNPJ) and that have been actively operating for a minimum period of 2 (two) years can request judicial recovery. However, some entities, such as mixed-capital companies, financial institutions, public companies, non-governmental organizations (NGOs), and cooperatives, must fit into this scenario.

Bankruptcy, in turn, is the legal situation in which a company is unable to pay its debts, and, after the relevant legal procedures, a decision is made declaring the company bankrupt, followed by the liquidation of assets and assets to pay off creditors as much as possible, respecting the order of preference of credits under the terms of the Law.

Once declared, bankruptcy prevents the debtor from carrying out commercial activities and managing their assets. All those involved, including creditors and legal acts, are now regulated by the legal bankruptcy regime (a set of legal rules pertinent to the bankruptcy enforcement of the business debtor). Therefore, the Bankruptcy Law establishes the parameters and those responsible for filing for bankruptcy, impacting the process and the implications of this scenario for the company and its creditors.

Bankruptcy can be requested by both the creditor and debtor, according to the guidelines established in Law No. 14,112/20. However, certain types of companies are not subject to the legislation mentioned above, such as public companies with mixed ownership, public or private financial institutions, credit cooperatives, consortiums, supplementary pension entities, companies operating health care plans, insurance companies, and capitalization companies. These companies are governed by their own legislation.

## RECOVERY & BANKRUPTCY IN THE CONTEXT OF FINTECHS

Fintechs introduce innovations into the financial markets through the intensive use of technology, with the aim of creating new business models. There are various categories of Fintechs on the Brazilian scene, such as: credit, payment, financial management, lending, investment, financing, insurance, debt negotiation, foreign exchange, multi-services, among others.

However, Fintechs do not always operate as Direct Credit Companies (SCD) and/or People-to-People Lending Companies (SEP), which are subject to authorization by the Brazilian Central Bank to operate.

Therefore, not all Fintechs are part of the National Financial System, so they are not always subject to the same rules as financial institutions and others regulated by the Brazilian Central Bank, which can lead to different treatment and procedures in judicial reorganization, bankruptcy and liquidation.

In view of this, although bankruptcy and judicial reorganization are consolidated procedures in the Brazilian legal system, there may be adaptations to be considered on a case-by-case basis, especially when it comes to Fintechs, and it is necessary to evaluate the business model, without forgetting the growing progress in the sector's regulations and its peculiarities.



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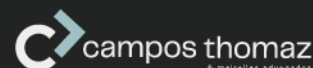
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