



# JUDICIAL RECOVERY OF COMPANIES

PRATICAL  
GUIDE

Brasília, 2011





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## Relevance of Law 11.101/2005

The Law 11.101/2005 – Law of Recovery and Bankruptcy of Companies and Bankruptcy, a regulatory mark on the Brazilian contest system, is a theme of high importance on the new Brazilian social order. It seeks to solve private conflicts, protect companies and most of all, its goal is to give special attention to social purposes, maintenance of jobs, economical sustainability and produce wealth to the country.

This guide is at the disposal of all who needs enlighten on companies recovery, whether judicially or extra-judicially. It intends to clarify concepts and make the 11.101/05 Law available to everyone that wishes to make conscientious use of it.

The idea of this guide came out of the practical experience and the confirmation that a great number of those who use this norm find difficulties in understanding it. It's a multidisciplinary law, filled with technical, juridical and financial concepts that deserve to be approached in a way that owners of micro and small companies can understand their businesses. So that they can assure with efficiency the company's recovery process and the financial commitment's honor, negotiating with creditors and molding a doable recovery plan, focused on the fulfillment of its social function.

This guide comes to meet society yearnings, and it has two main points. The first is to give those who use the law and those who wish to use the law the knowledge that these norms can provide means to recover companies going through difficulties. The second is to show in a clear manner how to start the recovery process, explaining each step and guiding through the whole process.

## JUDICIAL COMPANY RECOVERY

This guide is expected to direct and bring light into the subject to the greatest number of people possible, bringing the technical knowledge obtained on the day-to-day basis of the application of 11.101/2005 Law throughout the country. This material synthesizes the effort of the Ministry of Justice, through the Secretary of Commission and Services and the Department of Micro, Small and Medium companies, of the Federal Council of Administration, the Brazilian Recovery Institute (IRB) and the law operators, who dedicate this guide to all the Brazilians.

# Relevance of Administration and the Administrator

Administration is every decision made, over available resources, that works with and through people in order to reach one or several goals. It is characterized by the management of an organization, taking into consideration knowledge provided by other professionals and anticipating the consequences of your actions.

Within the primordial characteristics of administrations, there are: planning, organizations, direction and control. Through that knowledge it is possible to define its main functions:

- a) determine goals;
- b) analyze and know the problems;
- c) solve the problems;
- d) organize and allocate resources – financial, technological and human;
- e) lead – communicating, directing and motivating people;
- f) negotiate;
- g) make decisions;
- h) control – measuring and evaluating.

A good performance of administration depends on a professional administrator with a holistic vision over every department of the organization – characteristic that makes him able to make decisions from a systemic and global view of the situation that he is managing, as the following flow chart shows us:



On the specific cases that the 11.101/2005 Law approaches, in order to have a efficient and effective process, from both the company and the inspectorate parts, multidisciplinary knowledge is needed, mostly on the functioning of the organization, finances, economical sceneries, amongst others.

Administration is the outcome of a formation process that involves different areas, from exact sciences such as mathematics, to human

sciences such as philosophy. More and more this science is gaining importance on the development of professionals to give structure and impulse to the functioning of the most diverse sectors of organizations. Once companies acquire growing complexity and size on the economy, it is essential to have competent professionals to manage them, adding value before the financial market, searching to understand and systemize the administration of the capital, an essential factor in the current economy.

Administration is, therefore, one of the pillars of the process of recovery of companies. At the same time it is also one of the main reasons for its troubles, whether it is on the administration or on the professionalization of the organizations structure, or the lack of capacitated employees to work on the administration of the company, or the models obtained from family companies with an outdated management style, or even other reasons.

Currently, the Administrator represents a part of extreme responsibility inside the organization. He is the one who will give security and full transparency to the recovery or bankruptcy process. It is the administrators duty to guide through the preparation and send the financial and accounting information to the creditors, through a verification balance sheet together with the records, besides the very management of the company, which will be followed the entire time by a Judicial Administrator, person trusted by the Court.

Becoming a professional is not an easy task. That is one of the concerns of the Federal Council of Administration (CFA), which through the *Manual of Technical Responsibility of the Administrator*, sets the rules for the conduction of the profession. It is understood that the administrator needs to have full conscience of the changes and demands of the market. So he can perform his part with objectivity, competence, ethics, trustworthiness, professionalism, diligence, knowledge of the client and the market, efficiency, technical knowledge, zeal, honesty and transparency.



## Practical and guidance textbook

We live in a capitalist society, with strong market economy, that values private initiatives in all its forms. During the taking of action and making decisions, errors are not admitted, both administrative and management or financial accounting. In that sense, the economical activity of companies has not shown itself prepared to deal with the markets demand, that's more and more globalized. Sometimes, the wrong usage of companies leaves its marks.

The 11.101/2005 – Law of Recovery and Bankruptcy of Companies, was written to substitute the old Decree-Law 7.661/1945 – Law of Bankruptcy and Bankruptcy Protection. It offers more transparency in its processes as well as greater control over the process for the stakeholders. It also allows for those who did not succeed in exerting their activities to recover their credibility and their companies economically and financially, assuring balance on the judicial- economic relations and contributing to the building of a stronger economy.

The technical norm has a series of mechanisms and tools to help boost the company. However, they need to be applied with efficiency and effectively by specialized and multidisciplinary professionals.

The current Law demands the company to be followed on a daily basis. That following can be verified through monthly reports on the company's activities, as well as by the following of the Recovery Plan. That way, amateurism is not allowed, nor is the hiring of professionals that are not proved to be specialized either.

From that scenario, this Guide intends to serve as guidance to those who wish to initiate the judicial recovery and succeed on the boosting of the company. The living experience of the authors,

the following of the daily basis of the companies in the country and the concern shown by the Ministry of Justice, through the Secretary of Judiciary Reform, the Ministry of Development, Commerce and Industry, through the Secretary of Commission and Services and the Department of Micro, Small and Medium Companies, through the Federal Council of Administrations as well as the Brazilian Recovery Institute (IRB), made them dedicate themselves into depicting here, in an simple and resumed manner, a practical guide. Its following will lead to the rise of private activity, allowing higher rates of company efficiency and effectiveness towards the fulfillment of the recovery plan.

## Recovery of companies

The meaning of recovering a company is much wider than it seems. It means the complete reorganization of the economy, administration and finance of the private activity.

In practical terms, often businessman has built the company with effort and competence, but was not able to overcome certain difficulties. It happens due to:

- a) the reduction of the purchasing and selling power;
- b) the lack of planning regarding the tax burden and excessive bureaucracy;
- c) the relationship with employees being filled with prejudice and potentially conflicting;
- d) the company being built upon a outdated work legislation, amongst other problems.

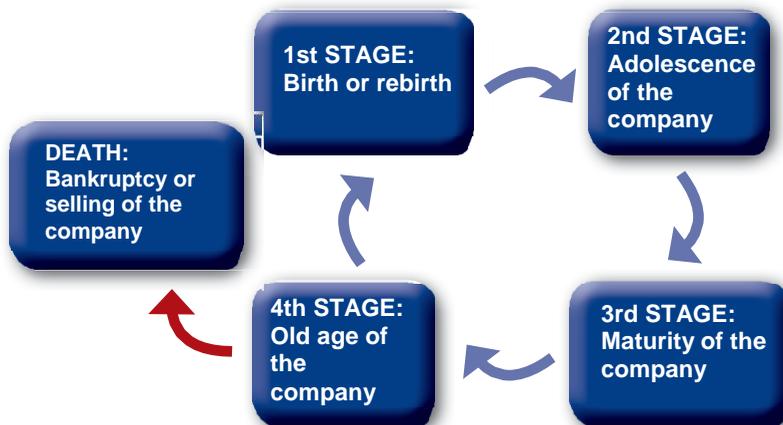
To recover a company, maintaining those situations, is not viable. Once we do not have that power to change the obstacles attributed to what is usually called Brazilian cost, the only way left to the businessman is to change what can be changed: the company's relationship with its contributors.

The viability of an insolvent company, and of those potentially insolvent, for not operating with profit, goes through the establishment of a modern relationship between those who direct the organization and those who are responsible for its processes, whether administrative or transformational.

The company must be a team, and those who work on it, or for it, must be partners. The role of the businessman is to search businesses, serve its customers in a personalized manner, visit suppliers, obtain technical innovations, stay up-to-date, take part in business associations, fight to overcome management

obstacles, and a series of things he do not usually do because is too involved with the inside of the company, wrapped up in unproductive meetings and worrying about the need to intervene on the operational system. In practice, his only external activities resume to finding money to supply resources of an organization that cannot stay alive without financial help from outside sources.

The life cycle of companies can be represented like this:



In general, it is possible to recover an organization, but that is a task that the businessman cannot accomplish by himself. The recovery of the company, most of the time, goes through a scenario with the following characteristics:

- a) insolvency or pre-insolvency;
- b) administrative- financial disorder;
- c) low employee morale;
- d) serious tributary-tax problems;
- e) incapacity of generating value.

From that came the necessity of a new professional legislation, able to contain modern mechanisms of total transparency. That can also provide the businessman possibilities of boosting

his company, as long as it has the minimal conditions of viability and fulfills the demands of the Law to recover.

The recovery of the company is then supported by the 11.101/2005 Law, which treats the recovery under the Judicial and Extrajudicial ways, as well as regulates the bankruptcy of the businessman and the business society.

In this new economical scenery, there will be a strong change of paradigms for the company and the businessman. In the same manner, the creditors (revenue office, banks, commerce, industry and workers) shall deeply reformulate their concepts towards the preservation of the company, the employment and good level of production, and put those as goals to be valued again.



## Judicial and Extrajudicial recovery of companies

The institution of the judicial and extrajudicial recoveries will imply on a forceful new and defying way to view the managing of companies in Brazil. It will have as purpose a greater level of transparency and responsibility of the management acts on the business activity for all the creditors of the company. Definitively, we will give a step towards the improvement of the corporative management process, already in course on some medium and large companies in the country.

Following that, a similar concept shall be extended to micro-companies and small companies. Especially because this new Law extinguishes the current bankruptcy prevention and institutes for those companies a different format for the concession of Judicial Recovery.

The Judicial Recovery has as a goal to make viable the overcoming of the situation of economical-financial crisis of the debtor. It allows the maintenance of the productive source, the jobs of the workforce and the interest of the creditors. Promoting, that way, the preservation of the company and, mainly, of its social function, producing wealth and making the country's economy stronger.

Summing it up, the Judicial Recovery is a legal measure destined to avoid bankruptcy. It gives the debtor businessman the possibility to present his creditors ways to settle his debt.

## Goals of the recovery



On the other hand, the Institute of Extrajudicial Recovery, as its own name implies, takes place outside the judiciary. With it, the debtor businessman will be able to negotiate directly with his creditors without the participation of a judge, when a settlement shall be elaborated that can be homologated by a judge. It is important to highlight that the tax debts, related to work, that come from mercantile lease amongst others, will not be included in that negotiation.

Once the deal between the debtor businessman and his creditors is settled, and approved by 3/5 of the creditors, its fulfillment becomes mandatory for all its parts.

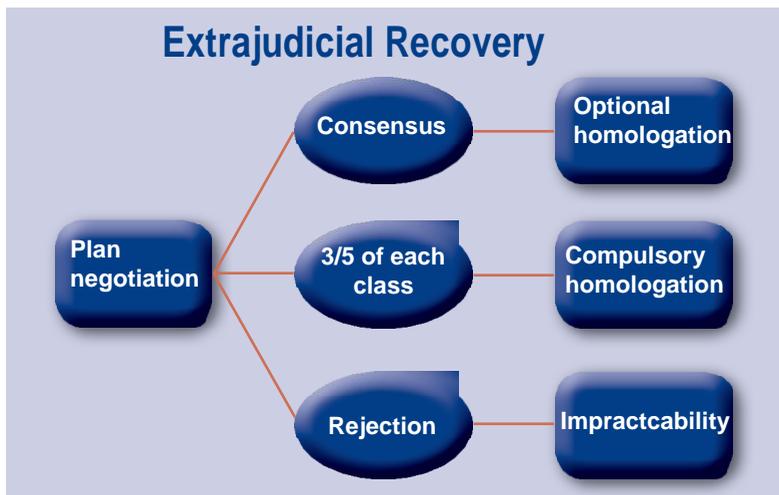
## Advantages and Disadvantages

On Extrajudicial recovery, there is an institute that allows a new solution. On it, the debtor negotiates directly with the creditors, and the Recovery Plan goes to Court just to be homologated.

It is a much faster and financially attractive procedure than the Judicial Recovery. It can be very interesting for small, medium and large companies, with private creditors, such as financial institutions, suppliers and others.

The great advantage of the Extrajudicial Recovery is that it does not require unanimity amongst the creditors. If three fifths of the creditors sign the plan, the others are forced to sign it too. Another advantage of the recovery is that its costs are smaller. It is a less bureaucratic solution, faster and friendlier which promotes greater proximity between the debtor and the creditors.

Following, for better understanding, a flow chart for the Extrajudicial Recovery:

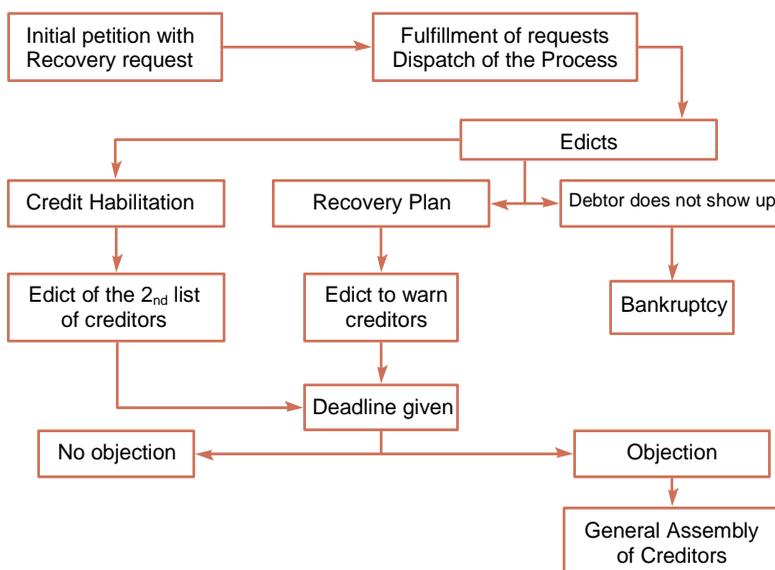


The judicial recovery, on the other hand, has a more onerous application than the previous. Its main advantage is to allow the debtor a chance to get a greater number of creditors involved and present a recovery plan that, effectively, can be followed and that avoids his bankruptcy.

Another advantage is a greater number of possibilities of maintenance of the work stations. This factor is able to move society towards the importance of the maintenance of a company that is economically viable, as well as to raise the possibility of recovery of credit with the creditors.

On the Judicial Recovery, the control is with the Judiciary (more specifically, with the recovery judge), besides the Judicial Administrator, named by him to act as a fiscal of the recovery process. It also involves the figure of the Creditors Committee and the General Assembly of Creditors. There is also an effective participation of the Public Ministry that acts as a fiscal of the Law.

Following, a flow chart of Judicial Recovery, for better understanding.



## Means and organs of Judiciary Recovery

With Judicial Recovery, the company will go through an exam of viability executed by the Judiciary, in function of the social importance, the labor and technology applied, the active and passive volume, the time of existence of the company and its economical size.

In the 11.101/2005 Law, there is a list of means of recovery of the economical activity (article 50). If there is an interest to apply for the advantage, the administrators of the company shall analyze what are the best means to overcome the crisis. Amongst the possible means, there are:

- a) scission, incorporation, fusion or transformation of society;
- b) constitution of full subsidiary, or transfer of shares, respecting the rights of the partners, in the terms of the current legislation;
- c) alteration of the corporate control;
- d) substitution, total or partial, of the debtors administrators or modification of the administrative organs;
- e) concession to the creditors of the right of election, separated from administrators, and the power of veto regarding the subjects that the plan specifies;
- f) increase of social capital;
- g) salary reduction, compensation of overtimes and reduction of the workday, through settlement or collective convention, amongst other means

The objective of this process is the reorganization of the company. For that, is necessary the actuation of specific organs, such as the General Assembly of Creditors, Judicial Administrator and Committee.

The General Assembly is the collegiate and deliberative organ responsible for the manifestation of the creditor's interests. Its competency is demonstrated in the article 35, I, letters "a" to "f", of the 11.101/2005 Law. On it, there are several instances of

deliberation: plenary assembly, labourist creditors, titular of guaranty rights in rem, titular of general or special privileges, unsecured creditors and subordinates. For the approval of the Judicial Recovery Plan, is necessary simple majority of the present in each stance, with the exception of the plenary. After the first vote, the plan shall be approved by the titular of over half of the passive correspondent to the class present at the assembly.

The Judicial Administrator is the auxiliary nominated by the judge that acts under his direct supervision. His functions vary: in case there is a committee or not; in case the company's administrators have been removed or not. He needs to be a rightful professional or a specialized legal person.

The creditors Committee is the facultative organ of the judicial recovery. Its existence or not is decided by the creditors, in assembly. Its function is to act as fiscal of the administrator and the entrepreneurial companies. It can, sporadically, elaborate an alternative plan and deliberate over the alienations of the active assets.

## Who can file for Judiciary Recovery?

It is necessary to explain that not every businessman will be able to use the Judicial Recovery. The businessman needs to exert regular activities for over two years and fulfill the following legal requirements:

- a) not have declared bankruptcy, and if it has, that all responsibilities deriving from it have been extinguished;
- b) not have, in less than five years, obtained concession of Judicial Recovery;
- c) not have, in less than eight years, obtained concession of Judicial Recovery based on the Special Plan;
- d) not have been convicted or not have, as administrator or control-partner, a person convicted for any of the crimes predicted in the Bankruptcy Law.

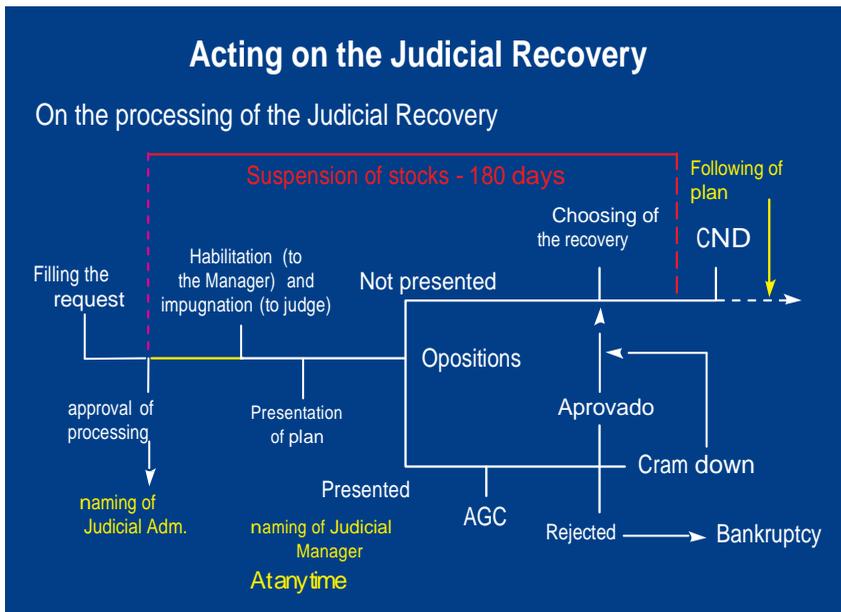


## How the process of Judicial Recovery works

The process of Judicial Recovery is developed in three distinct stages:

- postulatory stage (filling the lawsuit)
- deliberative stage (voting of the recovery plan)
- executory stage (executes the recovery plan approved by the creditors).

Bellow follows the flow chart of the Judicial Recovery:



**Postulatory stage:** the stage when the benefit of Judicial Recovery is required. In it, the solicitant must instruct the request with:

- a) exposal of the specific causes of debtor patrimonial situation and the reasons for the financial-economical crisis;
- b) account demonstrations regarding the last three fiscal years and raised specially to instruct the request, put together with strict observance of the applicable corporate law and composed of I – balance sheet, II – income statement report, III – income statement since the last fiscal year, IV – management report of the cash flow and its projection;
- c) a nominal list of all the creditors, including those obligated to do or give, with indication of each address, nature, classification and current debt value, discriminating its origin, the régime of each expiration date and the indication of the accounting registers of each pending transaction;
- d) full list of employees, containing the respective functions, paychecks, indemnifications and other parcels which they are entitled to, with the corresponding competence month, and discriminated values of the pending payments;
- e) certificate of regularity of the debtor at the Public Registry of Companies, the actualized constitutive act and the acts naming the current administrators;
- f) list of the particular assets of the partners in control and the debtors administrators;
- g) up to date extracts of the bank accounts of the debtor and of his eventual financial applications of any kind, including investment funds or stock market, issued by the respective financial institutions;
- h) certificates of the notary's protest office, situated at the domiciliary or head-office judicature of the debtor and those where he possesses branches;
- i) a list, written by the debtor, of all the judicial actions in which he takes part in, inclusive those of labourist nature, with the estimate of the respective required values.

**Deliberative stage:** with the condition that the demanded documents are in order, the judge will determine the processing of the judicial recovery, and, in the same act, will take the following measures:

- a) name the Judicial Administrator, observing the disposition at the art. 21 of this Law;
- b) determine the dismissal of the presentation of the negative certificates so that the debtor can exert his activities, except for hiring with the Public Power or for the receiving of fiscal or credit benefits or incentives;
- c) demand the suspension of all the actions or executions against the debtor, remaining the respective actions at the court where they are being processed, with the special clauses of the Law;
- d) determine that the debtor presents a monthly demonstration of bills, as long as the judicial recuperation is at place, under the punishment of destitution of its administrators;
- e) demand the indictment of the Public Ministry and the communication by letter to the Public and Federal Tax Authorities and to all States and Municipal Districts in which the debtor owns an establishment.

**Executory stage:** once the recovery is granted, the deliberative stage is finished and the executory stage begins, following the Recovery Plan.

The debtor will remain in Judicial Recovery until all the obligations predicted in the Plan are fulfilled and to the limit of two years after the Judicial Recovery was granted. During this period, if any of the obligations predicted in the Plan are not fulfilled, the status of the company will change from recovery to bankruptcy.

In all of the acts, contracts and documents signed by the debtor subjected to the process of judicial recovery, it shall be added after the companies name the term "under Judicial Recovery".

According to the article 63 of the 11.101/2005 Law, once the obligations are fulfilled inside the deadline, the judge will decree, by sentence, the closure of the judicial recovery and will determine:

- a) The payment of the sum of honoraries to the Judicial Administrator, only being able to end these obligations under the income statement, within 30 days, and the approval of the report, predicted on item c.
- b) The analysis of the debts of the judicial costs to be collected.
- c) The presentation of a report of the Judicial Administrator, with the dead line of 15 days, on the execution of the Recovery Plan by the debtor.
- d) The dissolution of the Creditors Committee and exoneration of the Judicial Administrator.
- e) The communication to the Public Registry of Companies so that the necessary measures can be taken.

## How should the debtor businessman proceed in the Judicial Recovery process?

Amongst the duties of the debtor businessman, is the presentation in court of the means through which he intends to overcome the crisis, which will be demonstrated through the Recovery Plan. Once the request is filled, and after the process is granted, the debtor will not be able to give up on the judicial recovery, unless he obtains approval of the General Assembly of Creditors.

The Judicial Recovery Plan is a study conducted with the debtor, that has the purpose of analyzing the company as a whole, identifying both weak and strong points, suggesting changes that will lead the company to succeed in the recovery process.

The Recovery Plan is build in two stages. The first is the diagnosis, based on a true accounting, where will be analyzed tributary and accounting fitting, employees, managerial systems, production structures, cash flow, both current and projected, amongst other measures. The second stage consists of the elaboration of an economical viability report, calculating profit margin and its projected cash flow, with the assumption of adjusts and corrections, allowing an effective implementation of the same.

The Recovery Plan shall be present by the debtor within 60 unpostponable days, counted from the day of the publication of the decision to grant the process of Judicial Recovery, under the punishment of conversion to bankruptcy. This plan must contain:

- a) An accurate description of the means of recovery that shall be applied, and its resume.
- b) Demonstration of the economical viability.
- c) The financial-economical report and the evaluation of the debtor's assets, subscribed by a legally habilitated professional or specialized company.

Before that, the judge will order the publication of an edictal, containing a note to the creditors informing the receiving of the Recovery Plan and fixating the dead line for the manifestation of possible objections.

The Judicial Recovery Plan cannot allow a deadline of over one year to the payment of the credits derivative from labourist legislation or resulting from work accidents past due to the date of the request.

The Plan will not be able to predict a deadline of over 30 days to the payment, to the limit of five minimal wages per worker, of the credits regarding the salaries, past due to until three months before the request of Judicial Recovery.

Any of the creditors can manifest their objection on the Plan to a judge within 30 days, starting at the date of the publication of the list of creditors. If there are any objections from any of the creditors regarding the Plan of Judicial Recovery, the judge will call the General Assembly of Creditors to deliberate on the Recovery Plan.

Once the Plan is approved by the Creditors Assembly, the judge will grant the Judicial Recovery. If none of the plans is approved, the bankruptcy of the businessman will be declared.

## Ordinary and Special Judicial Recovery Plans for ME and EPP

The Judicial Recovery Plan has the purpose to allow companies with financial trouble to once again become competitive and productive participants of the economy. Those who directly benefit from an efficient and effective plan are the controllers, creditors and employees, and, mainly, the debtor and society as a whole.

One should not mistake the Plan of Judicial Recovery with a postponement of the debt. The Plan must contain the instruments that identify attack and overcome the causes for the debt, believing it won't be just a way to delay the company's bankruptcy.

The Plan of Judicial Recovery can be presented in two ways, depending on the size and cash flow of the company, which are:

- a) Ordinary Plan of Judicial Recovery;
- b) Special Judicial Recovery Plan to Micro-corporations and Small Sized Corporations.

The Ordinary Recovery Plan is predicted in the article 53 of the 11.101/2005 Law and must be presented to the judge of the recovery within 60 days from the date the processing of the recovery process was granted. It is usually used by medium and great sized companies. However there is no reason why a small sized company cannot use the same method, as long as it is able to pay for the high costs of the procedure.

A Special Judicial Recovery Plan to Micro-corporations and Small Sized Corporations can also be presented. Under the conditions explicit in the law, in the articles 70, 71, 72 of the 11.101/2005 Law. Amongst the described conditions there is the prediction of the possibility to divide the debt into 36 monthly parcels, of equal value and successive, monetarily restated and increased of 12% interest per year. It also covers unsecured creditors (suppliers).

It is also necessary to point out that the creditor that agrees with the Recovery Plan presented can choose to continue to supply for the debtor. In that case, he will have privilege at the moment of receiving his credit in the eventual case of the debtor's bankruptcy, being removed from the class of unsecured creditors.

On the other hand, if by chance the creditor chooses to cease the supplying, once decreeted the bankruptcy of the debtor company, its credit will obey the legal order of payments of the bankruptcy, being paid after the fiscal credits (tributes, for example) and as collateral (of banks, for example).

# Accounting and financial-economical aspects of the Law of Judicial Recovery

Amongst the diverse aspects of the 11.101/2005 Law, its most outstanding aspects are the accounting and financial-economical, which will be named as follow:

**Accounting:** it is a system of information and evaluation destined to provide demonstrations and analysis of economical, financial, physical and productive nature, regarding the corporation that is the object of the accounting.

Through accounting, it is possible to analyze the economical situation of the companies. The evidence of difficulties and insolvency is usually verified by the analysis of the accounting reports.

**Balance-sheet:** It is the synthetic demonstration of the patrimonial state of a company or a corporation, through its investments and the origin of those investments.

It follows the demands of the Income Tax and the Federal Legislation, analyzes the final situation and the results of the exercise, providing basis to predictions and plans, and accounts for the management of the business.

**Special Balance-sheet:** It is the Balance-sheet raised for a determined purpose in a specific date, such as in the case of dissolution of societies and in the instruction of the Judicial Recovery request.

**Profit and loss account:** It is utilized to offer a logical order of analysis of patrimonial phenomenon. This means that profit and loss accounting is about the analysis of the details of profit, costs and income.

**Financial-economical report:** It is the technical report that evaluates the past, current and future conditions of the company, its viability in the market, amongst other factors. It must be made by an economist and/or administrator.

Report evaluating the assets of the active: It is the technical report that has the purpose to value the assets that are part of the active of the company – group of values that express the investment, or its capital applications, being the positive part of the patrimony.

Stakeholders: The term stakeholders, refers to every segment that influences and are influenced by the stocks of an organization, contrary to the understanding that the target group of an organization is the customer. It can be understood, in a simple manner, that stakeholder, from an administrative point of view, are the users of the information in the corporative environment. They are more detailed in the following chart.

USER OF THE INFORMATION	INFORMATION WANTED
<b>GENERAL ACIONIST</b>	Dividends flow, market value of the stock, profit per stock.
<b>MEDIUM AND HIGH ADMINISTRATION</b>	Return over the liquid and active patrimony and liquidity situation.
<b>FUNCTIONAL BODY</b>	Cash flow and profitability that assures the payment of wages and maintenance of employees.
<b>CREDITORS IN GENERAL</b>	Future cash flow, sufficient for the payment of the borrowed capital plus interest.
<b>GOVERNMENT</b>	Added value, productivity, taxable profit and macroeconomic planning.

**Differences between Micro and Small sized Companies:** the filling of the Declaration of Micro-Company (ME) or Small Sized Company (EPP) assures the right to different treatment with benefits in the administrative, credit, labourist, welfare and corporative development fields, in the terms of statute approved by the Complementary Law N. 123 of December 14<sup>th</sup> of 2006.

Companies will be classified according to their annual rough income, inside the following limits: up to R\$ 240 thousand as Micro-company (ME) and from R\$ 240.000,01 to R\$ 2,4 millions as Small Sized Company (EPP).

It won't be classified as ME or EPP the company that has, as partner or titular, private individual domiciled overseas. It is also not allowed as partner a legal person or even a person that takes part in another company that is part of the statute, in value 10% higher than the social capital, unless if the total annual rough income does not surpass the established limits.

**Records and accounting books:** are those designed to the registry of the company's patrimonial facts. Can be imposed by Law (Mandatory), imposed by fiscal regulation (Fiscal) and by company planning (Facultative).

### On the books of Micro and Small Companies

<b>Description</b>	The companies must provide registry and authentication of the following books: Journal; Balance sheets; Administrative minutes, if there is an administrator named outside the contract; Assembly minutes, for Limited Societies with over ten partners; Tax Advisory, if there is one; Promissory Registers, if still emitted.
<b>Regulative Act</b>	Brazilian Civil Code, Law 10406/2002 (articles 1180, 1181 and 1185), Law 5474/68, Decree 186/69, and Normative Instruction 65/97 of the National Department of Commerce Registry (DNRC)
<b>Competent Organ</b>	Commercial Council: for societies and Individual Corporative Companies. Civil Registry for Legal Person (RCPJ): for Simple and Cooperative Societies.
<b>Periodicity</b>	Before the beginning of activities, on the substitution or regularization of the new books.
<b>Different treatment for ME/PP</b>	There is none.

<b>Deadline</b>	Manual Book-keeping: the authentication must be done before the book-keeping begins; Mechanical or electronic book-keeping: after the binding of the charts or forms is done.
<b>Responsible</b>	Titular, partners, administrator and accounts man.
<b>Penalty for not following the instructions</b>	<p>The penalties vary according to the current federal, state and municipal legislation.</p> <p>In the Federal field, the general rule is that the lack of book-keeping on the Daily Book will imply on the evaluation of the company's profit, which is the most onerous form of taxation. For companies classified as SIMPLE and Assumed Profit, only for tax purposes, it's allowed the book-keeping to be done only in the Cash Book, as long as this portrays all financial and bank transactions. It means that the fiscals can only demand the Cash Book.</p> <p>However, besides another number of legislations, the Social Welfare System demands the companies to register, monthly, the values related to their payroll, the taxes, contributions and other incident tributes on that, including the IR/retained at the fount. These obligations, which are usually settled in the following month, can only be registered in the Daily Book, once the Cash Book is only destined to the registry of values paid and received.</p> <p>On tenders it is also demanded that the participant companies prove its financial-economical qualification through the Patrimonial Book-Keeping and the Demonstration of Results of the few last fiscal year.</p> <p>For the Commercial legislation, the lack of complete accounts book-keeping, which includes the Daily Book, keeps the company from using the resource of creditor's agreement. In the case of bankruptcy this may be considered fraudulent.</p>
<b>Cost/ Incidence</b>	Cost of the Book or the impression and binding.

<p><b>Documentation</b></p>	<p>At the Commercial Board  Petition (original plus copy), containing the complete name and address of the company with Number of Inscription on the Companies Registry (NIRE);  Books to register;  Payment of the fee;</p> <p>Civil Registry of Legal People;  Petition directed to the Register Office;  Payment of the authentication fee;  Previous book, if there is one;  Book to be authenticated, with the Opening Term Signed.</p>
<p><b>Observations</b></p>	<p><b>Registry Book of Promissory</b> – considering most companies adopt billing through bank slip, which has substituted the promissory, the Registry Book of Promissory shall be abolished from every company.</p> <p><b>Accounting of the Cash Book</b> – the Cash Book does not allow registry and total accountability control of the real financial and patrimonial situation of the company, for it is destined to register only the cash flow. That way, the rights and obligations of the company are not recorded, preventing that the Balance Sheet and the Results Report can be raised by the end of each exercise, the way it is demanded by commercial and welfare legislations.</p> <p>In order to obtain credit, or when they become in debt, companies that are not able to present their annual balance sheets are susceptible to risks, penalties and higher interest rates, due to the impossibility of proving its real financial-economical condition.</p> <p>Therefore, the single use of the Cash Book for registry of the cash flow, in money or check, does not meet the needs of the amount of information that the company need to provide to its partners, creditors, employees, Tax System and the market in general.</p> <p>The Federal Council of Accounting considers liable to punishment the accountant that is responsible for incomplete accounting, with the register of only the Cash Book, for being highly prejudicial to its customers.</p>

## Observations

**Complete Registry of Accounting** – The registers of all transactions, obligations and rights of the company can only be done through the Daily Book, which can also be destined to the registration of the Report of Results of every exercise. The keeping of the Cash Book represents around 90% of the accounting work of a small company, especially if considered that the totals registered in it are used and transferred to the Daily Book that functions as an auxiliary book.

Only complete accounting and book-keeping can contain reliable information to base commercial, credit and financial transactions and prove in court or out of it, the rights of third parties – including the employees, suppliers, partners, their heirs or successors, in case of removal or death.

For all those reasons, legal and economical, it is indispensable that all companies, even those who chose for SIMPLE or Presumed Profit, to demand their accountant to keep full register of the companies activities, which includes the Daily Book, raising and registering in the same book, by the end of each exercise, the Book-keeping and Registry of Results, that must be signed by him and the company's legal representative

## Mandatory Accounting Books

**Daily Book:** it is the accounting registry book destined to register all the patrimonial facts that happen in a company or organization. It is considered mandatory and indispensable by the 10.406 Law of 01/10/2002 (article 1.180), as well as by the Law-Decree 486 of 03/03/1969 and the Decree 64.567 of 05/22/1969.

**Cash Book (Simplified Book-Keeping Accounting – MEs and EPPs):** it is the simplified accounting registry book destined to register all the cash flow. In it, over the Debt part, are registered the cash inflow (income) and over the Credit part, are registered the cash outflow (payments). The legislation of the Income Tax dismisses the commercial registry for companies who chose

the SIMPLE or tax payment based on the Assumed Profit, as long as it is registered in the Cash Book, containing every move of the company.

**Tax Books:** are the accounting registry books destined to register all the facts connected to tax inspectorate.

**Entry Registry:** it is the accounting registry book destined to register the money received. In it, are identified individually supplier, receipts and values, payments received, the receiving or buying of merchandise or materials.

**Exit Registry:** it is the accounting registry book destined to register the cash exits or payments.

**Registry of Stock Production and Control:** it is the accounting registry book destined to register the entry, exit and balance of merchandise and materials that are nowadays commonly replaced by stock control charts, as well as by electronic computing systems.

**Inventory Registry:** it is the accounting registry books destined to register the verifying of the assets existence. In it, are registered data such as the quantity of assets, description of each asset, its single value as well as the total value of the assets owned by the company.

**Registry of IPI Examination:** it is the fiscal registry books destined to register the total of the accounting and fiscal values, related to the Tax over Industrialized Products (IPI) of the operations of entry and exit of merchandise.

**Registry of ICMS Examination:** it is the fiscal registry books destined to register the total of the accounting and fiscal values related to the Tax over Circulation of Merchandise and Services (ICMS) of the operations of entry and exit of merchandise.



## Bankruptcy crimes

The Law of Bankruptcy and Company Recovery ( 11.101/2005) points out some conducts that, in case of practice, whether by the administrator of the society, or by its responsible accountant, will be considered crimes and will lead to the prison of the responsible.

Such conducts are usually related to book-keeping, whether by the lack of presentation of the fiscal and accounting documentation or by the partial presentation of those documents. It can also be related to fraud to the creditors (like detour of money or the selling of assets and rights) or, still, untruthfulness in the course of the process.

It is important to point out that such crimes, defined as bankruptcy crimes, also apply to the businessman in process of Judicial or Extrajudicial Recovery of companies.



## Glossary

**Brazilian Contest System** - Competition amongst the debtors creditors that dispute simultaneously the preference over the asset possessed by this, or the division amongst these, of the product of its selling.

**Social Function** – The Law 11.101 of February 9<sup>th</sup> of 2005 presents an option to the businessman, having as purpose the valorization of the application of the social function principle and the preservation of the juridical business, proposing the use of the institute of companies recovery. The objective proposed by the legislation is to maintain the activities of the corporate society, and, with that, reestablish itself in the market without generating significant losses for all the involved, directly or not.

**Holistic vision** – The holistic vision of a company equals a unique, synthetic image of all the company's elements that are normally related to partial visions, embracing its strategies, activities, information, resources and organization (company structure, organizational culture, personnel qualification, as well as its relationships).

**Stakeholders** – The term stakeholders designates all the segments that influence or are influenced by the stocks of an organization. They are: suppliers; Government; future generations; stockholders.

### **Rupture, Incorporations, Merger or Transformation of Society**

- The rupture of societies is a way to restructure the society with the purpose of a higher level of administrative organization, optimizing, that way, several functions of the company, making it more competitive in the market, through the transfer of capital from one company to another. The company that acquires such capital absorbs, also, rights and obligations correspondent to the absorbed parcel, totally or partially. Incorporation is understood as an operation through which one or more societies are absorbed by another, that succeeds them in all rights and obligations. In that case, one of the societies will vanish (the one absorbed), remaining, however, with its judicial person unaltered towards the incorporating society. That will succeed the incorporated society in all its rights and obligations. The merge, or transformation of the society, is an operation through which two or more societies are merged to make a new one, which will succeed them in all rights and obligations.

**Full Subsidiary** – a company constituted, under public inscription, by one single actionist, who will necessarily be a Brazilian society. The society that subscribes in assets the capital of Full Subsidiary shall approve the report of evaluation of assets and answer for the damage caused to third parties, by fault of fraud in the evaluation. The Full Subsidiary can also be constituted by:

- a) Conversion through acquisition, by Brazilian society, of all its stocks; or
- b) Incorporation of all the stocks on the social capital to the patrimony of another Brazilian company

The incorporation of all the stocks of the social capital to the patrimony of another Brazilian company, in order to convert it into a Full Subsidiary, will be put under deliberation of the general assembly of both companies, by the aid of protocol and justification.

Ending of shares or stocks – Act of giving up the ownership of the shares for another individual.







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