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A Real Recovery for Brazilian Companies

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As the pandemic evolves in our days, similarly to a great majority of countries worldwide, we need urgent and inevitable shifts in behavioral patterns and cultural paradigms in Brazil as well. An average of 80 million cases reflects a traditional approach to judicialization of everyday life issues among Brazilians and a huge burden for our Judiciary.

The state jurisdiction is more than overloaded and the post-pandemic scenario will be catastrophic if everyone turns to the Judiciary to manage conflicts arising from the imposed social distancing.

No matter how much effort and financial resources are dedicated to increase courts efficiency, including the training of personnel (magistrates, court officials, among others) and automation, it is easily perceived among us that courts should be viewed as the ultimate door people should 'knock at' to solve their disputes. In this sense, the multidoor court concept has become very popular and highly accepted in and out of Brazilian courts. With this in mind, negotiators, conciliators and mediators have been trained to provide specific solutions to the cases brought to the courts and private chambers alike.

As a consequence, the present Brazilian legal panorama has been enhanced by the enactment of new legislation covering several fields of life, including the business/commercial areas. The recent Law nº 14.112/2020 is a good example. It amended Law nº 11.101/2005 and updated the legislation related to judicial, extrajudicial and bankruptcy reorganization/recovery.

It is worth mentioning that the scope of our original law was highly influenced by the American legislation, namely the Bankruptcy Code and more specifically Chapters 7 to 13. Similarly to the American legislation, the Brazilian law aims at protection of the "bankrupt" in a way that he/she/the company no longer remain with a negative stigma, of failure or fraud, allowing a new chance to try to enter the business sphere in a way less costly than before.

Under the terms of the new Section II-A of the law, debtor and creditors must always be encouraged to reconcile and mediate in the course of the recovery process or prior to its filing.

Article 20-A reads that these self-composition methods must be encouraged in any level of jurisdiction; art. 20-B provides for conciliation and mediation prior to or incidental to judicial reorganization and includes a list of cases where self-composition is allowed.

Paragraph 1st of art. 20-B makes it clear that debtors who intend to negotiate with creditors before

filing the request for processing the judicial reorganization, seeking courts' justice centers (CEJUSCs, in Portuguese) or specialized chambers, may request the suspension of judicial executions against them. This represents a measure of paramount importance that will encourage debtors to seek creditors before going to court.

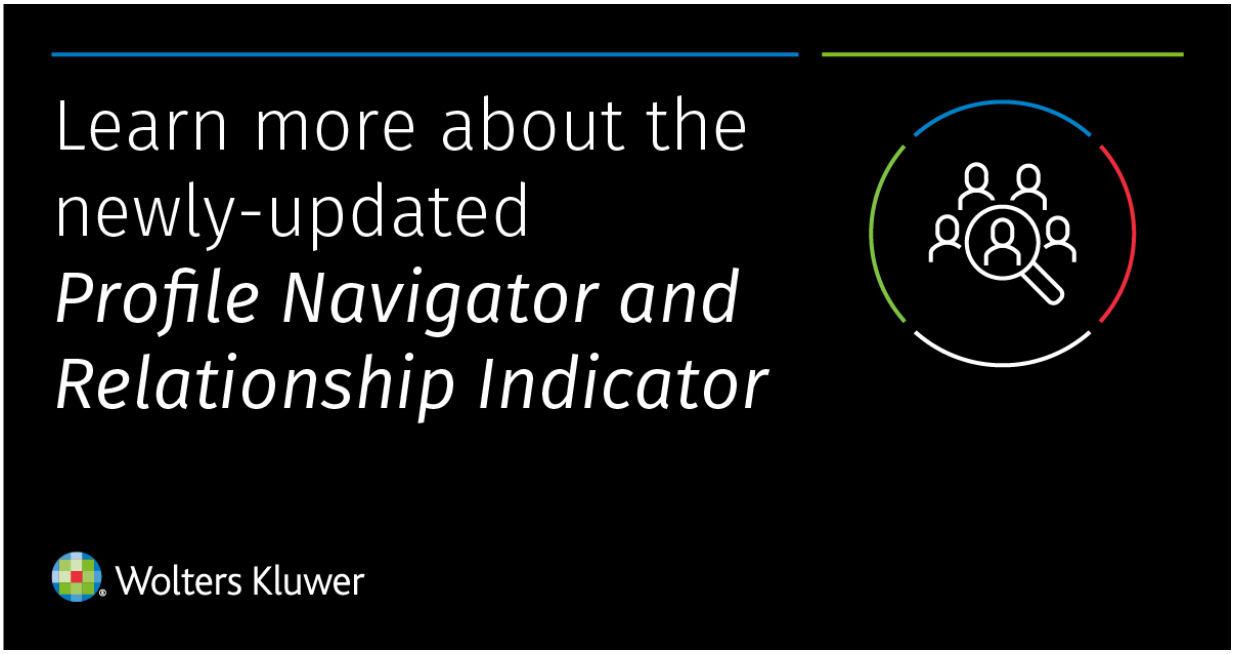
It is also the role of the Judicial Administrator to encourage the adoption of alternative dispute resolution, overseeing the regularity of negotiations and respect for good faith in these negotiations in order to bring greater economic and financial effectiveness and social benefit to the economic agents involved.

The compatibility of judicial reorganization/recovery with alternative dispute resolution has been largely recognized by academics recently and has been adopted by magistrates working with insolvency proceedings. Moreover, ADR has been promoted by the National Council of Justice in the judicial recovery scenario. After the recent revision of Law No. 11,101/2005, its adoption will be even greater.

In an article recently published by Brazilian newspaper *Valor Economico*, numbers are relevant about agreements with creditors resulting from mediations conducted in Rio de Janeiro and Sao Paulo, numbers which validate the importance of mediation in the scenario of debts negotiation and recovery. Some of the article's highlights follow:

– 61% success rate in agreements;
– minor discounts for debts;
– legal security: settlement agreements resulting from mediation serve as enforceable executive titles;
– estimate length of proceedings – 3 months (approx.) versus lengthy legal suits.

Finally, we believe that the combination of mediation and judicial reorganization helps to guarantee that two basic objectives of our work will be preserved: the company's ability to maintain itself operational and creditors' satisfaction!



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