"Contractualised Distress Resolution in the Shadow of the Law"(*)

ITALIAN NATIONAL FINDINGS

DATA GATHERING AND METHODOLOGY

The Italian findings are the result of **quantitative and qualitative empirical researches** carried out by the University of Florence, Bank of Italy, ELab-OCRI (University of Bergamo and University of Piemonte Orientale).[1]

The research has focused on:

- in-court judicial restructurings (*concordato preventivo*);
- out-of-court restructurings (*accordi di ristrutturazione*).

The **quantitative analysis** consists of descriptive statistics on the performances of the restructuring tools. The sample is made up of:

a) 3,350 in-court restructuring procedures (*concordato preventivo*) among about half of the Italian courts, consisting in the 35% of the total amount of "concordato preventivo" within the timeframe of the sample (2009-2015 included).[2] The data have been collected

(*) The project "Contractualised distress resolution in the shadow of the law: Effective judicial review and oversight of insolvency and pre-insolvency proceedings" is carried out by a partnership of several universities: Università degli Studi di Firenze (Project Coordinator), Humboldt-Universität zu Berlin (Partner) and Universidad Autónoma de Madrid (Partner), supported by the Consejo General del Poder Judicial (Associate Partner), Banca d'Italia (Associate Partner) and Entrepreneurship Lab Research Center (Associate Partner).

The project addresses several key issues highlighted in the Recommendation of 12 March 2014 on a new approach to business failure and insolvency (2014/135/EU). It also considers the Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM(2016) 723 final), published on November 22, 2016.

[1] The empirical analysis on out-of-court restructurings has been carried out together with the *Centro studi sulle procedure esecutive e concorsuali*, CeSPEC.

[2] We exclude from the analysis procedures for which no plan was submitted after the preliminary filing (the Italian so-called "concordato preventivo in bianco"). According to the National Court Register (*Portale della Giustizia Telematica* – PST), the total amount of filings for in-court restructurings ("concordato preventivo in bianco" included) is almost 16,000 in the time frame considered by the research.

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through a web platform ("FALLCO"), where court-appointed professionals could fill in questionnaires on information about in-court restructurings;[3]

b) almost 600 out-of-court restructuring procedures (*accordi di ristrutturazione*). The data have been collected through both the Companies' Register (*Registro delle imprese*) and direct access to courts' files. The sample refers to years between 2005 and 2016 included, and covers 62 courts out of 124 in which out-of-court restructurings have been filed.[4] The sample consists in approximately 37,5% of total out-of-court restructuring procedures (*accordi di ristrutturazione*) filed in Italy during the relevant period.[5]

This set of information has been supplemented by data gathered from other sources (namely, the "Portale Servizi Telematici (PST)", the official online register of the Minister of Justice, the Company Financial Accounts provided by Cerved, and Bank-firm credit relationships from the Credit Registry).

The **qualitative analysis** consists of qualitative information resulting from 27 stakeholders' standardized questionnaires and 21 targeted interviews with insolvency professionals (lawyers, charted accountants), bankers, NPL servicers, and judges.[6]

The empirical research allows the following considerations.

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[3] See A. DANOVI, S. GIACOMELLI, P. RIVA, G. RODANO, *Strumenti negoziali per la soluzione delle crisi d'impresa: il concordato preventivo*, in *Quaderni di Economia e Finanza della Banca d'Italia*, 2018, (bancaditalia.it/pubblicazioni/qef/2018-0430/QEF_430_18.pdf).

[4] The total number of Italian first instance courts is 141. Apparently, in-court restructurings have not been filed in approximately 17 Italian courts.

[5] The precise number of total out-of-court restructuring procedures (*accordi di ristrutturazione*) is hard to quantify, for several reasons.

The number of proceedings resulting for each court from the National Court Register (*Portale della Giustizia Telematica* – PST) not always corresponded to the number of proceedings that have proved to exist at the Court records office, when accessed in person. Such numbers have proved inaccurate due to the fact that some courts have registered out-of-court restructurings (*accordo di ristrutturazione*) under the inappropriate category, or have registered them twice (preliminary filings and final filings), and others have registered as out-of-court restructuring (*accordo di ristrutturazione*) procedures for consumers, professionals or non-commercial businesses (*procedure di sovraindebitamento* pursuant to the Italian law of 27 January 2012, No. 3). La Spezia court (the main outlier in our sample), for instance, had 86 filings resulting from PST and 5 "real" filings; similarly, Treviso court had 40 filings resulting from PST and 23 "real" filings. Other courts have proved to be more accurate (Rome court had 73 filings resulting from PST and 74 "real" filings). The numbers coincided perfectly for several courts (e.g., Milan 156, Naples 27, Florence 24, Prato 22).

Hence, and adjusting the numbers resulting from the PST (1,822 for the period 2005-2016) with the average overestimation pattern that we have observed, we believe the approximate number of out-of-court restructuring procedures (*accordi di ristrutturazione*) for the entire period 2005-2016 is approximately 1,600. Therefore, the conclusion is that our sample represents approximately 37,5% of the total.

Finally, in some Courts, documents for some procedures were only partly available, while other documents were at the sole discretion of the parts, thus not allowing the inclusion of such procedures in the research database.

[6] In details, the interviews have involved: 8 specialised lawyers; 2 accountants; 4 financial and industrial advisors; 2 NPL servicers (consisting in the 50% of the Italian market); 1 banker; and 4 judges covering the main Italian courts, namely Rome, Milan, Naples and Prato (even if Florence can be considered the main Court in Tuscany, Prato court is one of the most active in terms of restructuring proceedings).

Others judges were also interviewed during combined audiences in occasion of the 2017 and 2018 editions of the *Advanced Courses on Bankruptcy Law*, organized since 2006 by the University of Florence, to which take part approximately 25 judges and 200 professionals every year.

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GENERAL FINDINGS

A) Contractual resolution of business distress is currently facing a retreat

There has been a reduction in the number of restructurings since 2013 (more than proportional to the reduction of the total number of insolvency proceedings), with a decrease of in-court restructurings (*concordato preventivo*), only partially offset by an increase (significant in percentage, but not in absolute numbers) of the number of out-of-court restructurings (*accordo di ristrutturazione*).

The possible explanations to a similar retreat, as arose during the interviews, are:

a) Prudential rules on non-performing loans (NPLs) have become the main driver for banks in evaluating restructuring plans. Keeping NPLs on balance sheet today is increasingly costly for banks: new standards and rules, at both European and national level, push banks to pursue timely strategies for balance sheet deconsolidation of bad loans and prudent management of credit exposures, *i.e.* amounts of equity capital that loans, depending on the risk category, are to be backed by. This is impacting the banks' willingness to participate in restructuring proceedings. See, e.g., interviews with Banker #1 and Advisor #2.

b) Diffused perception of an abusive use of restructuring tools among judges (the extensive use of restructuring tools in the last years contributed to reduce their average quality).

c) Unpredictability of judicial decisions due to excessive discretion.

d) Recent legislative reforms have narrowed the space for in-court restructurings (*concordato preventivo*). The diagram below represents the evolution over-time of in-court proceedings (*concordato preventivo*) **(Figure 1 - green line)**. The fluctuations correspond to: *(i)* the introduction of the pre-petition filings (*concordato in bianco*) and the on-going in-court restructuring (*concordato con continuità*) in September 2012; *(ii)* Law n. 98, of 9th August 2013, providing for the appointment of an insolvency practitioner with monitoring tasks already at the stage of pre-petition; *(iii)* the introduction of the requirement of a minimum threshold of guaranteed recovery for creditors in in-court restructurings (*concordato preventivo*) envisaging liquidating plans, in 2015.

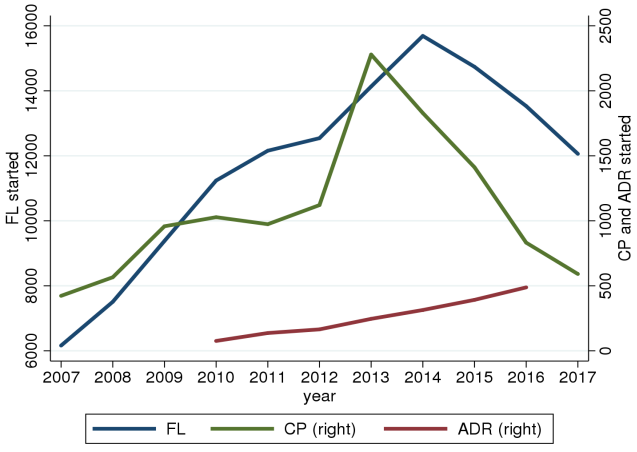

Figure 1

FL= insolvency proceedings (*fallimento*); CP= in-court proceedings (*concordato preventivo*); ADR= out-of-court proceedings (*accordo di ristrutturazione)*

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B) The empirical analysis shows that both in-court and out-of-court restructurings tend to concentrate more in the Northern Regions, than in the Central and Southern ones. This largely reflects the underlying regional distribution of firms in Italy.

The data have been collected through the "Portale Servizi Telematici (PST)", the official online register of the Minister of Justice **(Figure 2)**.

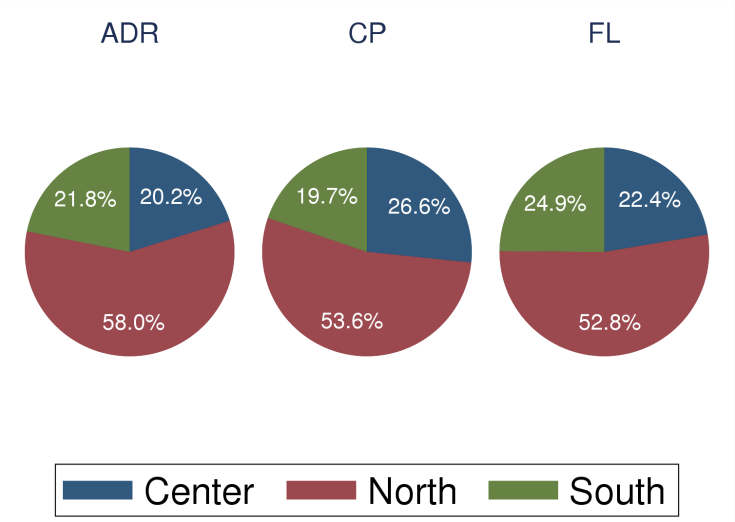

Figure 2
FL= insolvency proceedings (*fallimento)*; CP= in-court proceedings (*concordato preventivo)*; ADR= out-of-court proceedings (*accordo di ristrutturazione)*

C) Additional rounds of restructuring are very common

A single attempt to restructure is usually not sufficient to recover the business.

Second and third rounds of restructuring are indeed very common: professionals and creditors encounter obstacles to devise and then duly implement restructuring plans. This result may be influenced by the economic cycle: in the period covered by our analysis negative economic conditions prevailed.

1. TIMELY ACCESS TO RESTRUCTURING

1.1) In the vast majority of cases, debtors file for restructuring at least one year later than when they should have to effectively tackle the distress

a) Qualitative analysis indicates that a similar situation occurs in 76-100% of cases;

b) while only 0-25% of business timely access to restructuring.

See, e.g., interviews from Judge #4 and Judge #2.

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1.2) The situation of the businesses two years before the recourse to a restructuring tool or insolvency already shows some indicators of business distress, although such indicators do no offer conclusive predictions on the risk of insolvency

Two years before the restructuring or insolvency the businesses display higher riskiness than the generality of businesses: 33% of all businesses deemed risky, while this share increases to over 65% for businesses entering in-court restructuring and to 75% for businesses entering out-of-court restructurings **(Figure 3)**.

A large share of businesses was deemed risky even 5 years before the recourse to a restructuring tool.

However, the share of businesses that, although being considered risky, do not face an insolvency proceeding nor go through a restructuring in the following two years is too large to see the indications provided by the commonly used risk assessment parameters as conclusive.

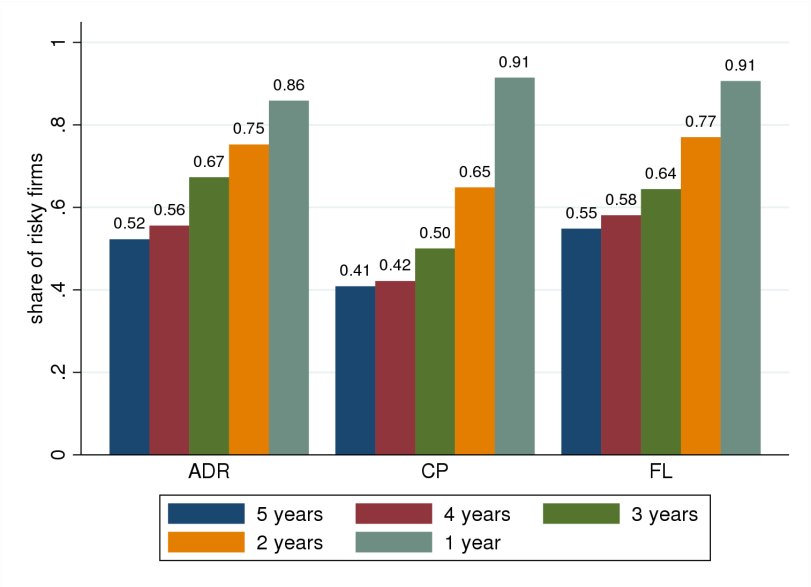

Figure 3

FL= insolvency proceedings (*fallimento)*; CP= in-court proceedings (*concordato preventivo)*; ADR= out-of-court proceedings (*accordo di ristrutturazione)*

1.3) The governance structure of the firm is relevant in determining timeliness in addressing distress

Qualitative analysis shows that:

a) family businesses, in which managers are fully aligned with shareholders, tend to procrastinate addressing situation of distress;

b) a similar pattern occurs also for professionally managed, private-equity businesses, probably due to incentives of equity fund partners to avoid disclosing failure to investors.

See, e.g., interviews with Judge #4 and Judge #2.

1.4) Smaller businesses often have an inadequate reporting system, which does not allow early detection of distress

The data emerges from several interviews of professionals assisting debtors and creditors. See, e.g., interview with Accountant #1.

1.5) The key trigger for restructuring are liquidity constraints and capital maintenance rules

Very often businesses tend to postpone serious restructuring until they are actually short of cash, sometimes until a petition for involuntary insolvency has already been filed.

In some cases, the breach of capital maintenance rules for stock companies and limited liability companies under Articles 2446/2447 and 2482-bis/2482-ter of the Italian Civil Code (i.e. the "recapitalize or liquidate" rule, which forces liquidation if the minimum capital is not restored within a short timeframe) is the trigger (see, e.g., interview with Lawyer #5).

1.6) Covenants can function as early-warner tools

Covenants in financial agreements, to which the firm is a party *before* restructuring, can play a crucial role in pointing out the financial crisis: distressed businesses that have previously entered in financial agreements that contain covenants have almost always already breached such covenants.

Qualitative researches, however, have pointed out that banks tend not to enforce them, although they do not waive them (in some case they threat to enforce them, not opportunistically but with a view to exert some pressure on the debtor to restructure).

1.7) The stigma associated to judicial insolvency procedures is still regarded as very high and this induces businesses in distress to pursue alternative solutions even when these appear hardly viable

The data emerges from several interviews of judges and professionals assisting debtors. See, e.g., interviews with Judge #4 and Accountant #1.

1.8) With respect to in-court restructurings (*concordato preventivo*), the earlier the restructuring, the better the outcome

Ceteris paribus, businesses that restructure early:

a) have better chances to get the plan approved;

b) offer better recovery rate for creditors;

c) return actual recovery rates closer to the proposed ones.

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2. TYPE OF PROCEDURE WITH RESPECT TO THE FEATURES OF THE FIRM

2.1) When out-of-court restructuring is possible, advisors advise against purely contractual out-of-court restructurings and tend to favour out-of-court restructurings with judicial confirmation (*accordo di ristrutturazione*)

a) Criminal and civil liability risks associated with purely contractual out-of-court restructurings are deemed unacceptable, considering that there are other instruments that protect parties without being too burdensome.

b) Out-of-court restructurings with judicial confirmation (*accordo di ristrutturazione*), when practicable, are appreciated, because they ensure protection to parties involved but, given their contractual nature, courts tend to defer to the judgment of the parties and only perform a formal control.

2.2.) Qualitative analysis indicates that purely out-of-court restructurings are more common for "unsophisticated" debtors (like small family businesses) than for larger ones

a) Family businesses tend to engage in negotiations with single creditors more than filing for restructuring proceedings (see, e.g., interview with Advisor #4);

b) on the contrary, purely out-of-court negotiations are rare for large businesses (see, e.g., interview with Lawyer #8).

2.3) Businesses involved in a restructuring are usually larger (when size is measured by total assets) than those filing for insolvency:

a) businesses that achieve in-court restructuring (*concordato preventivo*) are on average more than five times larger than businesses liquidated in insolvency liquidation (*fallimento*). This emerged from both quantitative and qualitative analysis (among the interviews see, e.g., the one from Judge #2);

b) businesses that achieve out-of-court restructuring (*accordo di ristrutturazione*) are on average more than twice as large as businesses that achieve in-court restructuring (*concordato preventivo*);

c) finally, businesses that are subject to insolvency liquidation are usually MSMEs (see, e.g., interview with Lawyer #1).

A possible explanation is that the micro and small size of these businesses is such as not creating strong incentives and opportunities to restructure, especially since the requirements of the relevant procedures, devised with particular reference to larger businesses, may be too burdensome.

In particular, restructuring procedures, especially when out-of-court, require hiring knowledgeable professionals that may guide the business through the procedure. Interviews

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indicated that micro and small business often lack of adequate professional advisors. See, e.g., interview with Judge #4.

Further, the costs of out-of-court procedures are often considered too high for smaller companies.

2.4) MSMEs businesses that are subject to insolvency liquidation have on average a smaller number of banking relationships and more concentrated bank credit than businesses involved in in-court or out-of-court restructurings

MSMEs are most commonly subject to insolvency liquidation (see Finding 2.2), although the characteristics that have been observed for these businesses – namely, fewer banking relationships and a more concentrated bank debt – should make them more suitable to restructuring proceedings rather than liquidation. These characteristics, when observed with respect to the larger businesses undergoing a restructuring, are positively correlated to the successful outcome of the restructuring attempt.

The diagrams below represent the number of banking relationships **(Figure 4)** and the concentration of the bank credit (for the largest bank) **(Figure 5)**. *[All data are expressed in median value]*

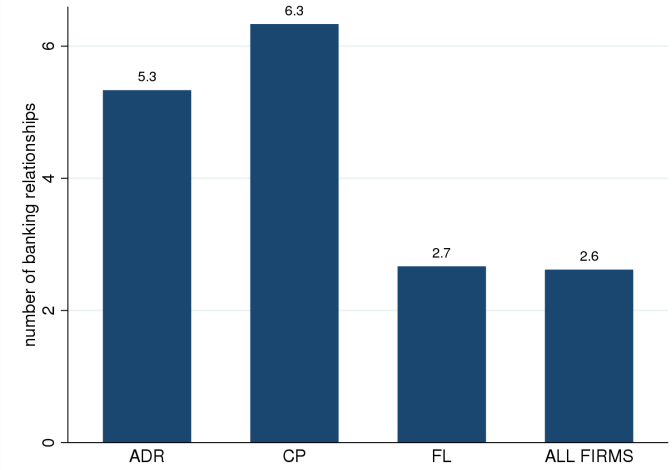

Figure 4

FL= insolvency proceedings (*fallimento)*; CP= in-court proceedings (*concordato preventivo)*; ADR= out-of-court proceedings (*accordo di ristrutturazione)*

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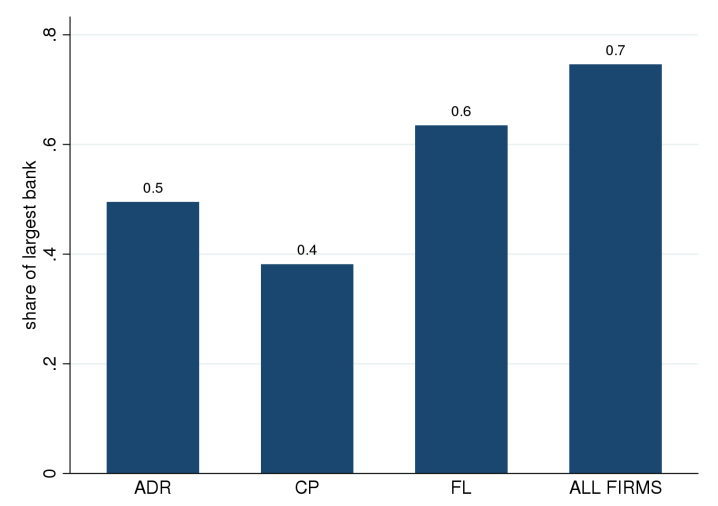

Figure 5

FL= insolvency proceedings (*fallimento)*; CP= in-court proceedings (*concordato preventivo)*; ADR= out-of-court proceedings (*accordo di ristrutturazione)*

2.5) Family businesses address the business distress at a later stage when there is no more space for restructuring

The qualitative evidence gathered shows that family businesses address the business distress when there is no more space for restructuring.

A possible reason is that among family business, directors are often shareholders, therefore tending to postpone restructuring, because of the risk to incur in personal liabilities.

The data emerges from several interviews of professionals assisting debtors and creditors. See, e.g., interviews with Judge #4 and Lawyer #6.

2.6) Professionals do not exert sufficient pressure to filter out bad cases from restructuring candidates

The evidence gathered from qualitative research (mainly interviews to judges) has pointed out the fact that professionals tend to advise the debtor to restructure even when, from an outside perspective, it is sufficiently clear that the attempt has no chances of success.

The given explanation is that professionals' remuneration is calculated on a time basis or as a lump sum, rather than on a success fee basis.

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3. RESTRUCTURING COSTS FOR PROFESSIONALS AND ADVISORS

3.1) Restructuring costs for professionals and advisors are regarded as high and may be particularly burdensome for MSMEs

The possible explanations are that:

a) the complexity of insolvency law, together with repeated law reforms, requires specialization and continuing education and practice;

b) only a limited number of professional are specialized in restructurings, despite the increasing demand for this type of professional services.

4. NEGOTIATING THE PLAN

4.1) Core actors in restructurings of companies reflect the ownership structure

Among the different subjects involved in restructuring proceedings, the debtor plays a central role in negotiating the plan:

a) in family businesses, shareholders are the real negotiators (since either they are the directors or they have a strong leverage on directors decisions);
b) whereas in investor-owned businesses the board of directors has a more relevant role.

On the contrary, the board of statutory auditors is not a relevant actor with regard to restructuring, with the only relevant exception of listed companies. See, e.g., interview with Advisor #4.

4.2) Banks' internal decisional process has an impact on negotiations

a) The banks decisional process are deemed too slow by other key players: banks decisional process is often affected by various elements (factual and regulatory), which have an impact on the institutions willingness to engage in constructive negotiations. E.g. prudential rules on NPLs became one of the main drivers for banks in evaluating restructuring plans: see above General Findings (A).

b) The debtor has often multiple financial creditors, which tend to share similar constraints and – to a certain degree – similar needs, but which are not easy to coordinate. To this regard, the qualitative research has revealed that the appointment of a professional (usually a lawyer) negotiating with the debtor on behalf of all the banks increases the likelihood of success for the restructuring attempt.

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4.3) Businesses, especially when small, face significant hurdles in dealing with tax authorities

Quantitative analysis has showed that tax authorities are often one of the main creditors of businesses in distress.

In relation to negotiations with tax authorities, qualitative research has revealed:

a) difficulties in ascertaining the amount of fiscal debt and the complexity of the issues relating to tax claims;

b) difficulties in identifying the counterparty for negotiation: competence for tax claims is often fragmented among several public bodies;

c) too weak incentives in pursuing effective solutions for tax authorities' employees, who sometimes appear afraid of facing personal liability (tax authorities too often aim at maximising the short-term value, neglecting the fact that they are repeat players);

d) tax authorities seem to be more cooperative in negotiations with larger businesses than with small ones.

The data emerge from several interviews of professionals assisting debtors. See, e.g., interviews with Lawyer #4 and Accountant #1.

4.4) The involvement of professionals with specific skill and expertise in facilitating negotiations is rare

Negotiating a plan often involves multiple creditors who are highly diversified. This multi-party context makes negotiations particularly challenging for the debtor.

Although such a setting seems to make the appointment a professional with skills and expertise in facilitating negotiations among multiple stakeholders (e.g. a mediator or conciliator) particularly useful, this seldom happens.

This hypothesis is not to be confused with the appointment of a professional representing banks (see above), who acts as representative of a specific category of creditors.

5. CONTENT OF THE RESTRUCTURING PLAN

5.1) A significant part of in-court restructuring (*concordato preventivo*) attempts aims at an orderly liquidation of the firm, whereas out-of-court restructuring (*accordo di ristrutturazione*) attempts usually aim at rescuing the business:

a) around 69% of businesses that achieve in-court restructuring (*concordato preventivo*) aims at an orderly liquidation of the businesses' assets (see **Figure 6**);

b) only a minority of those businesses that achieve out-of-court restructuring (*accordo di ristrutturazione*) aims at an orderly liquidation of the business via a sale of the businesses' assets:

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2% of the businesses undergoing an out-of-court restructuring do so through a *total* sale of the businesses' assets **(Figure 7, blue column)**; while 5% do so via a *partial* sale of the businesses' assets **(Figure 7, red column**).

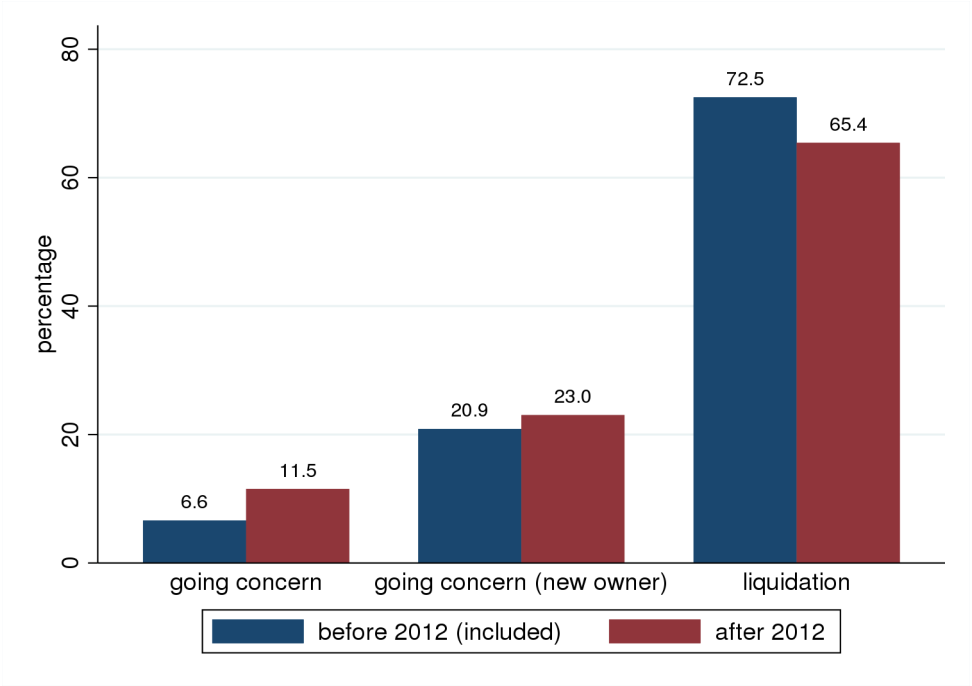

Figure 6

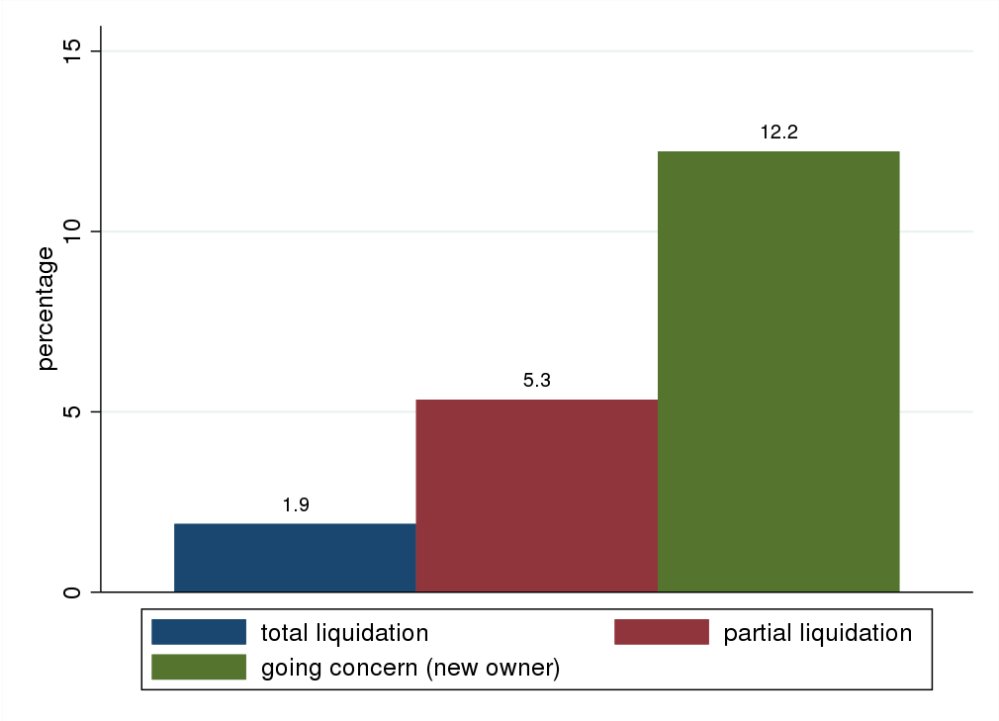

Figure 7

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5.2) A significant part of in-court restructuring (*concordato preventivo*) and a non-negligible part of out-of-court (*accordo di ristrutturazione*) restructuring attempts aiming at rescuing the business do so via a sale of the business:

a) among businesses that achieve in-court restructuring (*concordato preventivo*) aiming at rescuing the business around 20-23% of them do so via a sale of the business; while, 6-12% of in-court restructurings aiming at rescuing the business do so by carrying on the business as a going concern (see **Figure 6, above**);

b) approximately 12% of out-of-court restructurings (*accordo di ristrutturazione*) aiming at rescuing the business do so via a sale of the business **(Figure 7, green column, above).**

5.3) Operative measures are rarely included in the plan

Quantitative analysis shows that operative measures having an impact on the corporate governance structure are rare. E.g., only 6% of out-of-court restructurings (*accordo di ristrutturazione)* considers a change of directors.

This is especially true among MSMEs. See, e.g., interview with Judge #2.

5.4) Financial measures considered by the plan rarely imply new financing

Both quantitative and qualitative analysis underlines the importance of new finance to rescue business in distress (see, e.g., interviews with Judge #2 and Advisor #3).

However, according to our sample:

a) only few plans consider new financing: i.e. 25-30% of the out-of-court restructurings (*accordo di ristrutturazione*);

b) when new finance is provided it is mostly debt capital, while only a low percentage of new finance consists of fresh equity.

Similarly, the analysis shows that cancellation of debts occurs in approximately 25-30% of restructuring proceedings.

On the contrary, rescheduling of payment is more common and occurs in approximately 50% of the sample.

With regard to **new loans** to debtors that have accessed restructuring tools with the aim of rescuing the business:

- on average, in the three years following an out-of-court restructuring procedure (*accordo di ristrutturazione*), 22% of the active businesses have received at least one new loan, while in the three years preceding the procedure the average rate was 39% **(Figure 8)**;

- on average, in the three years following an in-court restructuring procedure (*concordato preventivo*), only 8% of the active businesses have received at least one new loan, while in the three years preceding the procedure the average rate was 66% **(Figure 9)**. A possible explanation lies with prudential regulation: the exposures towards the business that underwent restructuring

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were most likely qualified as non performing with forbearance measures, hence it takes at least 1 year to cure the non performing status (see Annex V to CRR, ITS 231; ECB Guidance on NPLs, par. 5.3.3). Any new exposure towards the same debtor would qualify in the same way because, for clients other than retail, exposures must be considered in the aggregate.

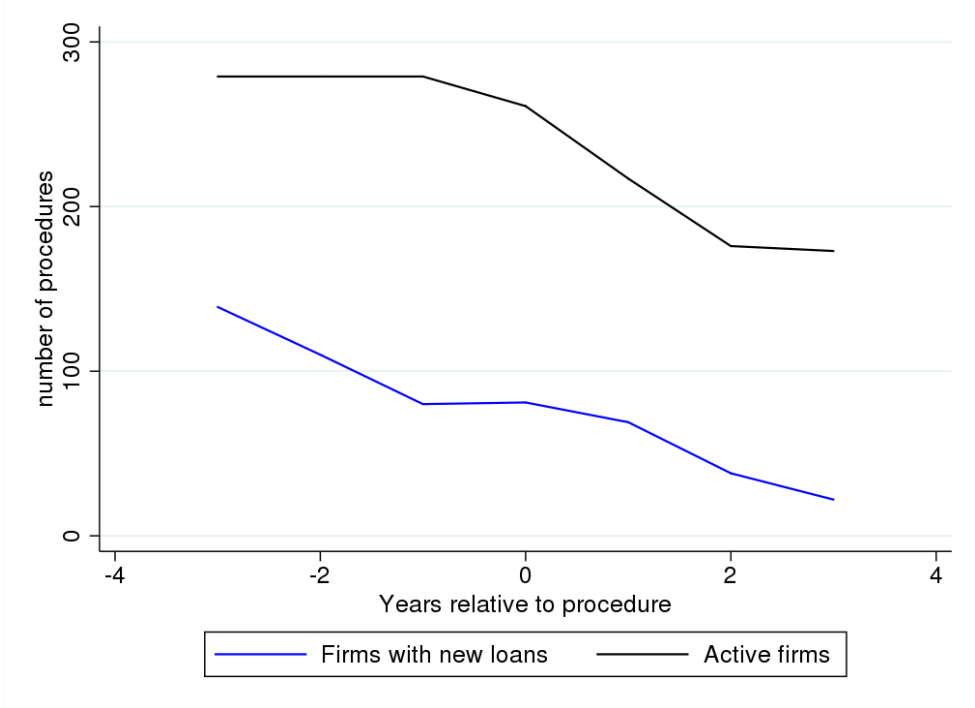

Figure 8

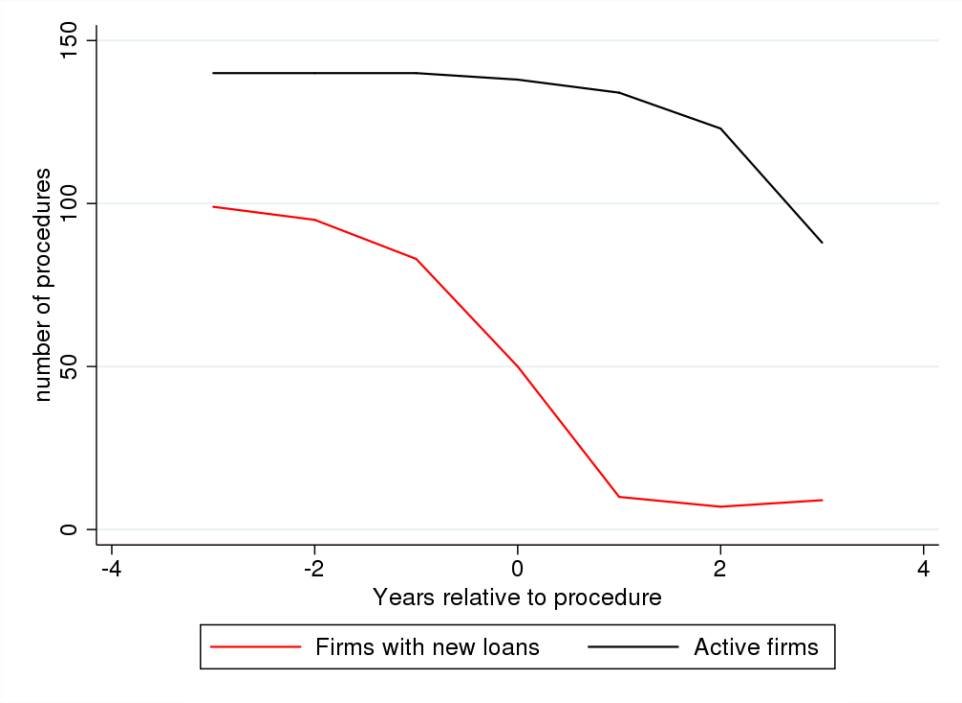

Figure 9

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5.5) Debt-for-equity swaps and conversion of debt into "hybrid" financial instruments are rare and virtually absent for small businesses

a) They entail significant costs, which are justified only in large cases.

b) Banks are not keen to exert control on restructured businesses, and rather opt for hybrid instruments that give them a share in the future profits of the firm, ranking above the shareholders' claim.

6. CIRCUMSTANCES AFFECTING THE OUTCOME OF THE RESTRUCTURING ATTEMPT

6.1) Family-owned businesses are more difficult to restructure than other businesses

Evidence from qualitative research has revealed that:

a) family-owned businesses restructure at a later stage (see above, Finding 1.2);

b) family members have usually offered personal guarantees for the bank debts of the company, which makes restructuring more complex and costlier;

c) in family businesses, directors who are also shareholders seek protection from liability and this may complicate the restructuring.

See, e.g., interview with Advisor #4.

6.2) The probability to survive is related to the adoption of strategic/operational measures

Businesses undergoing an out-of-court restructuring have a higher probability to survive in the following two years when the restructuring plans envisages strategic measures (e.g., change of the directors; collective dismissals of employees) that do not have a direct impact on the financial structure of the firm.

6.3) The probability of achieving a restructuring is positively correlated to the concentration of the debt (as measured by the largest individual bank share of credit)

Businesses that achieve out-of-court restructuring (*accordo di ristrutturazione*) have a more concentrated debt than businesses that achieve in-court restructuring (*concordato preventivo*). A possible explanation is that when the number of creditors is too high, out-of-court restructuring negotiations are particularly difficult (see Finding 2.4).

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6.4) The cost of the experts appointed by the court is negatively correlated with the likelihood of the restructuring proposal being approved by creditors and confirmed by the court. No such correlation has been found with the cost of the advisors

The empirical data do not allow drawing any tentative explanation for the abovementioned correlation.

6.5) Businesses going through an out-of-court restructuring may more easily access the credit market *vis-à-vis* businesses undergoing an in-court restructuring

Businesses undergoing an out-of-court restructuring are more likely to receive new loans after the completion of the restructuring. A possible explanation is that there is a biunivocal correspondence between the likelihood of receiving new loans and the perceived level of the crisis. In-court restructurings are considered worse than out-of-court ones. See Finding 5.4.

6.6) The lack of adequate specialisation and/or competence by judges and professionals undermines the efficiency of restructuring legal framework

Evidence from qualitative research suggests that:

a) judicial offices are organized in such a way that judges are employed in very different fields of law over the course of their career, thereby preventing their specialisation in business restructuring cases. This is especially true for minor courts, where restructuring occurs less often and specialization is not frequent;

b) judicial activity in insolvency matters requires more business background (e.g. economic and accountancy knowledge) than is usually in possession of the judges.

6.7) The empirical analysis shows that courts in the Northern Regions tend to confirm more plans of in-court and out-of-court restructurings than in the Southern Regions

More in details:

a) in-court restructuring plans (*concordato preventivo*) have been confirmed:

- in 69,9 % of proceedings in Northern Regions;
- in 70,3 % of proceedings in Central Regions;
- in 57,7 % of proceedings in Southern Regions;

b) out-of-court restructuring plans (*accordo di ristrutturazione*) have been confirmed:

- in 85 % of proceedings in Northern Regions;
- in 63 % of proceedings in Central Regions;
- in 79,5 % of proceedings in Southern Regions.

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