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Micro, small and medium-sized enterprises (MSMEs) represent about 90% of businesses and more than 50% of employment worldwide. Despite the economic relevance of MSMEs in most countries around the world, and even more in emerging markets, most insolvency jurisdictions do not address adequately the insolvency of MSMEs.

In a recent article, entitled 'Implementing an Insolvency Framework for Micro and Small Firms' (International Insolvency Review, forthcoming), I seek to contribute to the existing literature on the insolvency treatment of MSMEs. After analysing the particular problems and features of MSMEs, as well as the insolvency reforms for MSMEs recently implemented in various countries around the world, including Australia, Colombia, Myanmar, Singapore and the United States, and the policy recommendations suggested by the World Bank and UNCITRAL, my paper proposes a new insolvency framework for MSMEs.

In my view, an efficient insolvency framework for MSMEs should be based on four pillars. First, regulators, practitioners and policymakers should promote the use of workouts for viable MSMEs facing financial trouble. On the one hand, workouts can save the significant costs associated with insolvency proceedings. On the other hand, since MSMEs usually have simple financial structures with a few creditors, reaching an out-of-court agreement is more feasible for these firms. In order to facilitate this strategy, regulators or private actors such as association of banks or insolvency practitioners should enact some good practices for out-of-court restructurings. Further, they should make sure that the insolvency and business community is aware of them. Examples of good practices have been published by various organizations, including INSOL, the World Bank and the Association of Banks in Singapore.

Second, if the out-of-court agreement fails, there will be reasons to believe that the MSME is not economically viable or the creditors do not trust the shareholders/managers. In those cases, the MSME should not be reorganized. Viable businesses with unreliable shareholders/managers should be sold as a going concern. Hence, even though it is possible that the workout failed due to various factors other than the viability of the business (eg, holdout problems, lack of professional advice, bad negotiations, etc), the insolvency system should prevent the use of reorganization procedures by non-viable businesses. In my view, the best way to deal with this problem while still providing viable businesses the opportunity to survive is by implementing a simplified insolvency procedure for MSMEs based on a system of auctions. The use of auctions in bankruptcy has been previously suggested in the academic literature and it has been supported by empirical studies. Under the proposed system of auctions for MSMEs suggested in my article, any interested party would be allowed to submit cash and non-cash offers, including restructuring proposals. As a consequence, the auction process can end up with the approval of a reorganization plan, a going concern sale, or a piecemeal liquidation.

While the auction takes place, the procedure needs to be managed. Unfortunately, many insolvent MSMEs cannot afford the appointment of an insolvency practitioner. This situation has been described as a 'market failure' requiring a governmental intervention consisting of the appointment of a public trustee (Harris and Murray, 2020). My paper argues that the appointment of a public trustee can be desirable in countries with efficient and reliable public administrations. However, in many jurisdictions (particularly emerging economies), this solution might not work. For this reason, I argue that a 'private solution' based on a debtor-in-possession model without the appointment of an insolvency practitioner might be more desirable. In such cases, however, several protections should be implemented to safeguard the creditors' interests.

Third, since many MSMEs are not incorporated or, even if they are, the shareholders/managers usually act as guarantors for the company's debts, an efficient insolvency regime for MSMEs should provide a discharge of debts for the honest and unfortunate individuals behind the MSME.

Therefore, more coordination is needed between corporate and personal insolvency laws (Sarra, 2016). Ideally, the discharge of debts should take place during the simplified insolvency process. Thus, the individual debtor behinds the MSMEs would not need to initiate a separate process, making this solution less costly for the debtor, the judicial system, and society as a whole.

Fourth, various legal strategies should be implemented to reduce the stigma of insolvency proceedings. While addressing this problem is essential for all types of companies, it becomes even more important for MSMEs due to the fact that the reputation of the entrepreneurs behind an MSME is closely linked to the fate of the business. Potential solutions to reduce the stigma of insolvency proceedings may include the use of the term 'debtor' instead of 'bankrupt', and providing a clear separation between insolvency law and criminal law–both are still associated in many countries. Other jurisdictions have adopted more innovative solutions. For example, in Chile, the institution in charge of overseeing insolvency proceedings was named 'Superintendence of Insolvency and Re-entrepreneurship'.

Finally, another solution potentially adopted to reduce the stigma associated with insolvency proceedings may consist of promoting education and awareness about the role of insolvency law in the promotion of economic growth. For that purpose, it is important to emphasize that insolvency law is not only a set of rules dealing with financially distressed companies. Instead, it is an important piece of an entrepreneurial system. Indeed, since the way insolvency law is designed may affect how debtors and creditors make business decisions from an ex ante perspective, insolvency law can actually be more relevant for solvent than for insolvent firms. Thus, even in the absence of a situation of financial distress, insolvency law has the ability to affect the levels of entrepreneurship, innovation, access to finance and economic growth in a country. Therefore, changing the way insolvency law is understood can also reduce the stigma traditionally associated with insolvency proceedings.

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