



The Colombian experience

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Presentation outline

- **I. The current matters of MSMs' Insolvency**
- **II. The Colombian experience**
- **III. Alternatives for MSMEs' Insolvency Proceedings**

Current Matters of MSMEs Exit

- **Different Definitions of MSMEs**
- **Lack of robust insolvency framework to support fresh start (Discharge) for entrepreneurs or early rescue (Yan Liu)**
- **UNCITRAL Guidelines may be selectively applied (Yan Liu)**
- ***SMEs adopt very different legal forms**
- ***"The importance of SMEs in the Economy is not matched with a specific set of insolvency rules devised for these businesses:**

In most modern insolvency regimes there is a liquidation and reorganization procedure for corporate debtors (in most cases, designed with large companies in mind) and a regime for personal bankruptcy."

*The Insolvency of SMEs, José M. Garrido, Insolvency and Creditor –Debtor Regimes Initiative, The World Bank

Current Matters of MSMEs Exit

- **Formal insolvency proceedings with high costs, very complicated procedure rules, sophisticated and complex entry requirements (Jose María Garrido)**
- **Out of court regimes not available for MSMEs (Yan Liu)**
- **Not a proper system to deal with insolvency of MSMEs (Luis Meján)**
- **Informal firms would like to formalize, but are prevented from doing so by costly regulations and bureaucracy (Mahesh Uttamchandani)**

II. The Colombian experience

- **Colombian Insolvency Law: Law 1116 of 2006**
- **Insolvency regulations have adopted virtually all international standards (UNCITRAL – World Bank Principles)**
 - UNCITRAL Recommendations for Insolvency of enterprise groups
 - Insolvency of natural persons (Out of Court recovery proceedings and **Discharge** for individuals). Law 1564 of 2012

II. The Colombian experience

- **Doing Business 2014, Resolving Insolvency:**

Resolving insolvency (rank) 25

Time (years) 1.7

Cost (% of estate) 6

Recovery rate (cents on the dollar) 70.3

Insolvency Proceedings -last 5 years-

		2009		2010		2011		2012		2013	
		JUDICIAL LIQUIDATION	REORGANIZATION	JUDICIAL LIQUIDATION	REORGANIZATION	JUDICIAL LIQUIDATION	REORGANIZATION	JUDICIAL LIQUIDATION	REORGANIZATION	JUDICIAL LIQUIDATION	REORGANIZATION
Initiation of Proceedings per year	BIG	6	19	25	7	13	28	22	12	12	24
	MEDIUM	27	35	43	50	33	56	30	37	22	41
	SMALL	62	34	54	49	47	68	39	43	55	53
	MICRO	59	4	72		44	11	55	8	57	1
TOTAL		154	92	194	106	137	163	146	100	146	119

	Rank USD 2009		Rank USD 2010		Rank USD 2011		Rank USD 2012		Rank USD 2013	
MICRO	-	121,561.66	-	125,964.30	-	131,002.87	-	138,609.65	-	144,186.32
SMALL	121,561.66	1,215,616.64	125,964.30	1,259,643.00	131,002.87	1,310,028.71	138,609.65	1,386,096.48	144,186.32	1,441,863.20
MEDIUM	1,215,616.64	7,293,699.83	1,259,643.00	7,557,857.97	1,310,028.71	7,860,172.29	1,386,096.48	8,316,578.86	1,441,863.20	8,651,179.17
BIG	7,293,699.83		7,557,857.97		7,860,172.29		8,316,578.86		8,651,179.17	

	JUDICIAL LIQUIDATION A 2013	REORGANIZATION A 2013
Active Proceedings	52	93
	74	210
	80	228
	90	19
TOTAL	296	550

Active registries in the Mercantile Registry corresponding to companies and merchants.

Matrículas Activas Registro Mercantil - SOCIEDADES						
ORGANIZACIÓN JURIDICA	GRAN EMPRESA	MEDIANA EMPRESA	PEQUEÑA EMPRESA	MICROEMPRESA	NO DETERMINADA	TOTAL
EMPRESAS ASOCIATIVAS DE TRABAJO	31	7	89	17.424	3.213	20.764
EMPRESAS INDUSTRIALES Y COMERCIALES DEL ESTADO	2	0	0	1	0	3
EMPRESAS UNIPERSONALES	12	125	1.623	59.115	3.950	64.825
OTRAS SOCIEDADES	21	55	168	1.047	3.642	4.933
SOCIEDAD AGRARIA DE TRANSFORMACIÓN	0	0	0	28	4	32
SOCIEDAD ANONIMA	3.347	6.603	10.713	18.450	4.371	43.484
SOCIEDAD COLECTIVA	14	8	21	470	245	758
SOCIEDAD EN COMANDITA POR ACCIONES	159	448	840	1.488	977	3.912
SOCIEDAD EN COMANDITA SIMPLE	158	817	4.082	20.004	5.266	30.327
SOCIEDAD EXTRANJERA	334	318	528	1.593	235	3.008
SOCIEDAD LIMITADA	705	4.296	28.135	306.752	106.119	446.007
SOCIEDADES POR ACCIONES SIMPLIFICADAS SAS	2.072	8.258	32.730	179.531	25.211	247.802
TOTAL	6.855	20.935	78.929	605.903	153.233	865.855

Matrículas Activas Registro Mercantil - PERSONAS NATURALES						
ORGANIZACIÓN JURIDICA	GRAN EMPRESA	MEDIANA EMPRESA	PEQUEÑA EMPRESA	MICROEMPRESA	NO DETERMINADA	TOTAL
PERSONAS NATURALES	293	1.475	13.353	1.682.682	260.585	1.958.388

Matrículas Activas Registro Mercantil - TOTAL						
ORGANIZACIÓN JURIDICA	GRAN EMPRESA	MEDIANA EMPRESA	PEQUEÑA EMPRESA	MICROEMPRESA	NO DETERMINADA	TOTAL
TOTAL	7.148	22.410	92.282	2.288.585	413.818	2.824.243

Mercantile Registry of active and inactive companies and merchants in liquidation.

Estado	PERSONA NATURAL	PERSONA JURIDICA	Total
ACTIVA	150	237.280	237.430
CANCELADA	30	10.374	10.404
TOTAL	180	247.654	247.834

Mercantile Registry of active companies and merchants in liquidation ranked by last year's renewal.

REGISTROS	2013	2012	2011	2010	2009	OTROS AÑOS	TOTAL
REGISTRO MERCANTIL - Sociedades	4	4	7	3	2	212.120	212.140
REGISTRO MERCANTIL - Personas Naturales	2.880	8.449	6.405	4.245	3.181	130	25.290
TOTAL	2.884	8.453	6.412	4.248	3.183	212.250	237.430

III. Alternatives for MSMEs' Insolvency Proceedings

- **Simplification of business insolvency frameworks**
- **MSMEs need alternative and ad-hoc insolvency regimes that have:**
 - Shorter Time frames, less cumbersome, lighter evidentiary requirements, fewer procedural steps, more cost-efficient
 - *Simplification, debtor-in-possession as an incentive, plans: preservation of businesses, maximum return to creditors, satisfaction of claims with future income, treatment of personal guarantees, out of court solutions
 - Specific, special, functional solutions for MSMEs.

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III. Alternatives for MSMEs' Insolvency Proceedings

- Discharge**
- ADRs available for MSMEs (low costs) or hybrid proceedings**