An overview Italian companies and the financial and economic crisis: a cultural revolution

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Abstract: Since 2007 a financial crisis has hit economies. Each nation identified tools to help companies face numerous daily difficulties. This paper identifies some intermediate solutions from purely contractual (informal) arrangements for debt rescheduling between debtor and creditors to formal reorganisation or liquidation procedures. This techniques form a continuum based on the degree of judicial intervention and the degree of formality in general. Italian bankruptcy law has been recently modified to introduce: recovery and resolution planning. Formerly, the main aim of Italian bankruptcy and business recovery used to be the protection of creditors; now the goal is claiming priority to safeguard companies and reduce their difficulties. The government recognise that difficult situations can be solved in much the same way as private issues. The phenomena is relevant as in the first six months of application, the number of pre-insolvency agreements submitted to the Italian courts have been more than doubled.

Keywords: Italian companies and the financial economic crisis; Italian bankruptcy law; pre-insolvency agreements; resolution planning; restructuring agreement; cultural revolution; recovery procedures; UNCITRAL Legislative Guide; business research; independent auditor.

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1 Stay in business: a cultural revolution in Italian bankruptcy tradition

The economic difficulties and market conditions produced by the severe financial and economic crisis require that administrative and control agencies conduct a careful analysis of the impact of the crisis on ordinary business activity and to consider promptly appropriate strategies. The main risk of a crisis is that it may trigger a negative trend that generates distrust of the company by the stakeholders, thus making it more difficult to access credit, obtain suppliers' extensions, and to maintain a solid, strong image on the part of customers. To assess what can be done to restore financial equilibrium, the possible origins of the crisis should be carefully analysed. They are largely attributable to a lack of ability of the economic entity to perform business activities efficiently and effectively or to a negative economic business cycle. The Italian legislation has intervened by introducing new procedures designed to preserve the enterprise as an economic value for the community. The procedures require varying degrees of formalisation and public intervention to improve the outstanding debt by using debt restructuring.

To counter the difficulties of the crisis, the government has recently modified the bankruptcy law to introduce some specific instruments: recovery and resolution planning (*piano attestato ex Art. 67 lf*), restructuring agreement (*accordo di ristrutturazione ex Art. 182 bis*), pre-insolvency agreements with creditors (*concordato preventivo ex Art. 160 lf*). Ideas to shape them from the US Chapter 11 tradition and from United Nations Commission on International Trade Law's (UNCITRAL's) Legislative Guide to the Insolvency Law.

The core idea is that restructuring can help to preserve the business value of debtor enterprises, the interests of other stakeholders and the benefit of creditors as a whole. According to the UNCITRAL Legislative Guide (2005)[1], all debtors that falter or experience serious financial difficulties in a competitive marketplace should not necessarily be liquidated; a debtor with a reasonable survival prospect (such as one with a potentially profitable business) should be given the opportunity to demonstrate that there is greater value (and, by deduction, greater benefit for creditors in the long term) in maintaining the essential business and other component parts of the debtor.

Restructuring and reorganisation proceedings are designed to give a debtor some breathing space to recover from its temporary liquidity difficulties or more permanent over-indebtedness and, as necessary, provide the debtor with an opportunity to restructure

its debt and its relations with creditors. If reorganisation is possible, generally it will be preferred by creditors if the value derived from the continued operation of the debtor's business will enhance the value of its claims.

1.1 The first model: US Chapter 11 in-court reorganisation vs. out-of-court settlement

US Chapter 11 provides for the possibility of in-court reorganisation as opposed to out-of-court (consensual) settlement[1]. In the first situation, the debtor company requires admittance into a procedure monitored by the Court. The debtor company presents an appropriate application accompanied by required information and preselects a restructuring plan to be approved by the court.[2] In the second situation, on the contrary, there is an unregulated out-of court agreement, so there is a completely privatised negotiation between the debtor and its creditors. For additional information, see Carmichael et al. (2007), Guatri (1995), Gabuardi (2007) and Stanghellini (2007).

In summary, the most important aspects of an in-court reorganisation can be described as follows. The creditors, according to Chapter 11 procedure, cannot attack debtors' assets. By virtue of the automatic stay principle, every procedure, cash-in and recovery activity and repossession is suspended and cannot be undertaken or pursued by creditors for debts or claims that existed before the enterprise entered Chapter 11. The debtor, which requires admission to the procedure, has 120 days in which it has the exclusive right to propose a reorganisation plan. This must be accompanied by a document called a *disclosure statement*, which must provide adequate information[3] according to Section 1125 of the code. The information is considered appropriate in the US context when it is detailed enough to allow a hypothetical creditor that belongs to one of the relevant classes and is not in the position to obtain information from other sources to express an informed judgment on the plan. At the termination of the exclusive period, every creditor may present a reorganisation plan to oppose to the one presented by the debtor. The debtor assumes the condition of a debtor in possession of goods and preserves the possession of goods until the reorganisation plan is approved by the Court (confirmation), or the application may be rejected or converted to a Chapter 7 procedure to liquidate assets but not reorganise activities. During this period, the debtor continues to run the business but must present periodic reports to the court.

To oversee and monitor the correctness of debtor activities and the accuracy of the procedure, a monitoring authority called the US Trustee is established. This role is fulfilled by experts who are in charge and assume administrative tasks to act as an auxiliary of bankruptcy judges, sometimes referred to as the bankruptcy arm of the Justice Department. In some cases an examiner is nominated. The examiner's main task is to investigate the activity of the debtor with specific reference to the commission of financial fraud and mismanagement. Starting with the results of the investigations, the examiner helps the court to understand whether it would be a good decision to keep the company.

1.2 Model 2: UNCITRAL's legislative guide to the insolvency law

The UNCITRAL Guide[2] points out that two main types of proceedings are common to the majority of insolvency laws: reorganisation and liquidation. As a procedure designed to save a debtor or, failing that, a business, *reorganisation* may take one of several forms

and may be more varied than liquidation in its concept, acceptance and application around the world. The term reorganisation is used in the guide in a broad sense to refer to the type of proceeding with the ultimate purpose of allowing the debtor to overcome its financial difficulties and resume or continue normal commercial operations (although in some cases, the decision may include a reduction in the scope of the business, its sale as a going concern to another company or its eventual liquidation).

Modern economics have significantly reduced the degree to which the value of the debtor's assets can be maximised by liquidation. In situations in which technical know-how and goodwill are more important than physical assets in the operation of a business, the preservation of human resources and business relations are essential elements of value that cannot be accomplished by liquidation. Also, long-term economic benefit is more likely to be achieved by reorganisation proceedings, as they encourage debtors to take action before their financial difficulties become severe. Lastly, there are social and political considerations that are served by the availability of reorganisation proceedings, which protect, for example, the employees of a troubled debtor.

The guide highlights that reorganisation may take a number of different forms. Although reorganisation may not be as widely included in insolvency laws as liquidation and may not, therefore, follow such a common pattern, a number of key or essential elements can be determined:

a submission of the debtor to the proceedings (whether on its own application or on the basis of an application by creditors), which may or may not involve judicial control or supervision

b automatic, mandatory stay or suspension of actions and proceedings against the assets of the debtor that affect all creditors for a limited period of time

c continuation of the debtors' business, either by existing management, an independent manager or a combination of both

d formulation of a plan that proposes the manner in which creditors, equity holders and the debtor itself will be treated

e consideration of, and voting on, acceptance of the plan by creditors

f possibly the judicial approval or confirmation of an accepted plan

g implementation of the plan.

The document draws attention to the fact that to reduce the functions to be performed by the court under an insolvency law and at the same time provide the necessary checks and balances, an insolvency law can assign specific functions to other participants, such as the insolvency representative and creditors, or to some other authority, such as an insolvency or corporate regulator. For this reason the implementation of an insolvency system depends not only on the court but also on professionals involved in insolvency proceedings, whether they are insolvency representatives, legal advisers, accountants, valuation specialists or other professional advisers. The adoption of professional standards and training may assist in the development of capacity.

2 Continuum of various restructuring techniques form from restructuring to formal insolvency: the Italian position

The greatest novelty in the Italian context is the clear will of the government to recognise such that the management of difficult and problematic situations can be solved in court but as almost private issues, with no instant dispossession as per the US model and the UNCITRAL Legislative Guide. In January 2013, the Italian Supreme Court (*Corte di Cassazione*) definitively outlined that district courts should enter the matter only to warrant the legal feasibility of the agreements that the company has asked its creditors to accept. The decision to consider the prospective solution in terms of the advantage or disadvantage of the creditors is strictly referred to them.

The reform of Italian bankruptcy and business recovery law was introduced in 2005 and then reviewed more than once. It has deeply changed the philosophy and the basics of the country's business recovery procedures. The new regulations discipline has introduced tools that are oriented toward the maintenance and recovery of the company by agreement estimation between creditors and entrepreneur, with a greater involvement of the former in management of the crisis.

The legislator:

1 encourages the use of restructuring techniques to manage the business crisis

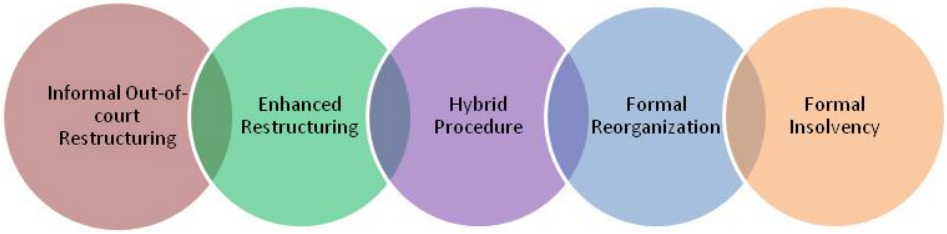
2 recognises value to private autonomy

3 returns to the debtors and creditors with the composition of conflicting interests.

The main aim of Italian bankruptcy and business recovery used to be the protection of creditors, whereas at present, the priority has shift to safeguard companies and try to get them out of trouble. The latter objective can be attained when the company has not dissolved definitively its value and the financial deficit can be overcome. Business reconstruction and recovery tools are graded according to the crisis statement of the business.

Various restructuring techniques form a continuum in the treatment of financial difficulties (Garrido, 2011).[4] Thus, with the purely contractual (or informal) arrangements for debt rescheduling between the debtor and its creditors, to the fully formal reorganisation or liquidation procedures, some intermediate solutions can be identified. These solutions may be identified in terms of enhanced procedures in which contractual arrangements are supported by the law or standards, and hybrid procedures in which contractual arrangements are supported by the intervention of the courts or an administrative authority. This continuum is based on the degree of judicial intervention and the degree of formality in general. It does not necessarily imply successive stages of treatment of debtor's situation but instead illustrates the existence of various options that may be used, alternatively or occasionally, in certain sequences, which may include some overlapping elements. This continuum provides to debtors and creditors a panoramic view of the range of options at their disposal in a given legal system (see Figure 1).

Figure 1 The continuum of procedures for the treatment of financial difficulties (see online version for colours)



Source: Reprinted from Garrido (2011)

The Italian context has been enriched by three new procedures, which can be classed into the three main groups:

1 enhanced restructuring

2 hybrid procedure

3 formal reorganisation.

2.1 The new Italian enhanced restructuring

An enhanced restructuring is outlined in the introduction to the Italian bankruptcy code (recovery and resolution planning – Piano attestato ex Art. 67, c. 3, l. d). This can be considered an enhanced restructuring procedure as the purely contractual agreements are enhanced by the existence of a norm that infers that a formal reorganisation plan must be drawn up by the management and that an independent auditor must examine it and express a positive opinion. This process can be considered to restore the financial well-being and viability of a debtor's business. The business continues to operate, using several means, possibly including debt remission, debt rescheduling, debt-equity conversions and sale of the business (or parts of it) as a going concern. The plan can involve changes in the composition and/or structure of assets and liabilities of debtors in financial difficulty, without resorting to a full judicial intervention, and with the aim of promoting efficiency, restoring growth, and minimising the costs associated with the debtor's financial difficulties. Restructuring activities can include measures that restructure the debtor's business (operational restructuring) and measures that restructure the debtor's finances (financial restructuring).

Usually, in this context, banks are required to grant new finance and to maintain self-liquidating lines, and strategic suppliers are required to maintain an ordinary supply flow. The Art. 67 procedure allows these operations, which are essential for financial reinstatement, and shelter them from claw-back actions that, in the case of an unsuccessful result of the plan, could be formulated by the trustee.

Standstill agreements are needed and recommended to allow business operations to continue and to ensure that sufficient time is available to obtain and evaluate information about the debtor and to formulate and assess proposals to resolve the debtor's financial difficulties. A contractual agreement for the suspension of adverse actions by both debtor and the main creditors may be required. That agreement generally needs to be sustained for a defined period, usually a short one.

2.2 The new Italian hybrid procedure

A hybrid procedure was outlined and introduced in the Italian bankruptcy code the (restructuring agreement: *Accordo di ristrutturazione ex Art. 182 bis*). This procedure represents a prepackaged plan negotiated as an agreement. The procedure offers an efficient alternative to purely formal insolvency proceedings, as in this case the debtor must negotiate and come to an agreement with at least 60% of its creditors and must provide full payment to the residual creditors that must be considered as outsiders.

The procedure is classed as hybrid because the involvement of the court is necessary but less intensive than in formal insolvency proceedings. The debtor submits the agreement to the court, starting a procedure that can result in the confirmation of an insolvency plan that is binding on all creditors. To implement a *182 bis* procedure, the formal reorganisation plan drawn up by the management and the opinion expressed by the independent auditor must be examined and approved by the court. Neither a trustee nor an examiner is appointed.

2.3 The new Italian formal reorganisations and agreements with creditors

A formal reorganisation was finalised to reshape the pre-insolvency agreement (*Concordato preventivo ex Art. 160 lf*), which was already in effect in the Italian bankruptcy code, with different features and boundaries and introducing the new *Concordato preventivo in continuità ex Art. 186 bis lf*, an agreement with creditors to maintain continuity of the business). While the former aims to liquidate the business, the latter is a real reorganisation procedure with the ultimate purpose to allow the debtor to overcome its financial difficulties and resume or continue normal commercial operations, despite that in some cases, the procedure may include a reduction in the limits of the business or its sale as a going concern to another company. Italian legislators seem to have finally taken into serious consideration the UNCITRAL Legislative Guide, which points out that, to be desirable, an insolvency law must adopt a non-prescriptive approach with supporting arrangements that achieve a result that provides more value to creditors than as if the debtor were liquidated (UNCITRAL, 2004). In both procedures, it is recognised as a role of the Court to which the first application for admission is addressed. Usually, debtors turn to this procedure in more demanding situations.

In September 2012, a further modification was made to the bankruptcy act to introduce the opportunity for Italian companies to ask to be admitted to both Art. 160 and Art. 186 bis procedures by simply filling in an almost standard application without the need to have already either composed or audited the formal reorganisation plan. As with US Chapter 11 procedures, once the application is filed, debtors' assets are sheltered as if beginning an automatic stay period. The shelter follows from:

a the block of the enforcement initiatives of creditors

b he neutralisation of the court mortgages registered in the last 90 days that are considered ineffective

c he ban on acquisition of non-agreed privilege causes

d he deferral of the requirement to recapitalise the company (as stated by the Italian law *Art. 2446 co2 e 3, Art. 2447, Art. 2482 bis, co 4,5,6, and Art. 2483 ter c.c*).

The court fixes a period of a maximum of 180 days for integration of the application. When it expires, the court verifies compliance between:

a he law previsions

b he debtor's formal reorganisation (or liquidation) plan together with the auditor's opinion on the feasibility of the plan and on the fairness of the figures on which the plan was built.

If the results are adequate, the court opens the procedure and appoints a trustee to look after the debtor activity, to review and update the figures and the plan and to set a fraud audit. The trustee communicates its opinion about the reorganisation (*Art. 186 bis*) or liquidation (*Art. 160*) to creditors in a special public report and chairs the creditor's meeting during which it is called to express its vote on the proposed agreement.

3 Relevance of fair disclosure to creditors: the independent auditor (*attestatore*) and the trustee's role

Reformed bankruptcy law recognises a key role of the independent auditor who is asked to render an opinion on the feasibility of the plan. This introduces a relevant novelty in the Italian tradition. The company must appoint an independent auditor, named *attestatore*, who will

a examine the proposed agreement

b audit the financial data on which the plan is built

c examine, in accordance with recognised assurance standards, the plans the company declares it is able to implement.

The independent auditor must be appointed by all companies that approach one of the three new procedures introduced in the Italian context. The auditor is not an advisor, as his role is to safeguard creditors' interests. The reform of September 2012 provided:

- A requirement for strict independence, including a long cooling-off period: to be considered independent, the auditor and his partners cannot have been advisors of the company or part of the management or supervisory board or statutory auditors board (*collegio sindacale*) in the last five years.
- • Relevant criminal sanctions in case of unfair and untrue disclosure: if the independent auditor exposes false information or otherwise does not report important information, is punished from two to five years detention and a penalty from 50,000 to 100,000 euro. If the events are committed in order to achieve an advantage for himself or for others and if from the act is achieved an offense to creditors sanctions may be increased.

In the context of hybrid procedures (Art. 182 bis) and of formal reorganisations (Art. 160, Art. 186 bis) the report of the independent auditor (*attestatore*) is the first document, together with the debtor application, from which the court learns about the agreement. The court is indeed asked to examine the report contents and structure and to judge whether or not the application can be admitted. In formal reorganisations in which the court admits the debtor to the procedure, a trustee is appointed. As previously noted,

the trustee has different duties from the independent auditor, including the performance of a specific fraud audit. However, it is possible to assert that the independent auditor, the trustee and the court, are all interested in reaching the same goal, which is to inform creditors about the proposal in a reliable manner. The sustainability of the hypothesis on which the plan is based is guaranteed by their auditing, assurance and investigation. It is then up to creditors whether or not to accept the agreement.

4 Italian guidelines and international standards of engagement

A group composed of Italian professionals and academics is currently working to compose a national standard that will support professionals in the performance of their tasks. Some guidelines have already been worked out by the Italian CPA National Institute in 2010 but more needs to be done. No national assurance standards have previously existed in the Italian context, which is the reason that the independent auditors and trustees mainly refer to the international ISAE3400 (International Standard of Engagement) in regard to the examination of prospective financial information. For additional information, see Riva (2001, 2009) and Quagli et al. (2011).

In this document includes many recommendations, but one is particularly relevant and demanding in the crisis context. The document clearly points out that *prospective financial information* means financial information based on assumptions about events that may occur in the future, possible actions by an entity, that the information is highly subjective in nature and its preparation requires the exercise of considerable judgment. Prospective financial information can be in the form of a forecast, a projection or a combination of both (e.g., a one-year forecast plus a five-year projection). A *forecast* indicates prospective financial information prepared on the basis of assumptions about future events that management expects to take place and the actions management expects to do as of the date the information is prepared (best-estimate assumptions). A *projection* means prospective financial information prepared on the basis of:

a hypothetical assumptions about future events and management actions that are not necessarily expected to take place, such as when some entities are in a start-up phase or are considering a major change in the nature of operations

b a mixture of best-estimate and hypothetical assumptions.

Such information illustrates the possible consequences as of the date the information is prepared if the events and actions were to occur (a *what-if* scenario).

Independent auditors and trustees need to analyse the plan proposed by the insolvent company and to clarify the nature of the assumptions. Difficulties arise from the discontinuity usually declared by the company to justify the change in performance. The difficultly consists in understanding:

a whether a structured action plan with clear milestones has been outlined

b whether the main involved counterparts and stakeholders are aware of the situation and support the plan

c whether the figures are coherent with the trend analysis.

A crisis situation increases the risks that the company will fail to achieve its goals and for the professionals to give positive opinions on plans that the company is unable to implement in the future.

5 First application results: official figures

With the goal of staying in business, the government should face the crisis as soon as possible. The introduction of new tools, especially the introduction of the possibility that businesses may be sheltered from creditors' actions by presenting a blank application for *Art. 160 or Art. 186 bis* procedures, have produced remarkable effects that help companies that proclaim their difficulties in advance.

First application results show that in the first six months of application, between the beginning of September 2012 and the beginning of March 2013, the number of formal re-organisations (Art. 160 and Art. 186 bis procedures) submitted to the Italian courts has more than doubled, increasing, on a national scale, from 351 to 769 procedures. This phenomenon is extraordinary and cannot be linked to the worsening of worldwide or Italian macroeconomic figures.

Table 1 Number of Art. 160 and Art. 186 bis procedures presented in the first six months of application, compared with the same period from the previous year

Region	*From 11 September 2011 to 9 March 2012*	*From 11 September 2012 to 9 March 2013*	*Range*	*Range %*
Abruzzo	4	5	1	25%
Basilicata	2	0	–2	/
Calabria	4	4	0	0%
Campania	8	8	0	0%
Emilia Romagna	50	93	43	86%
Friuli	10	18	8	80%
Lazio	13	27	14	108%
Liguria	7	25	18	257%
Lombardia	96	201	105	109%
Marche	14	53	39	279%
Molise	0	3	3	300%
Piemonte	21	39	18	86%
Puglia	4	13	9	225%
Sardegna	3	10	7	233%
Sicilia	5	13	8	160%
Toscana	52	126	74	142%
Trentino Aldo Adige	4	12	8	200%
Umbria	0	6	6	600%
Valle d'Aosta	1	0	–1	/
Veneto	53	113	60	113%
Tot	*351*	*769*	*418*	119%

Source: Reprinted from Longoni (2013)

Table 1 shows the details on a regional basis. In absolute terms, the phenomenon is more relevant the Lombardy area by Tuscany. In relative terms, almost all areas have registered important impacts.

5.1 First results of the research

In June 2012, a group of Italian researchers from various universities, together with the president of the bankruptcy judges of the Milan Court started important research to analyse *Art 160 lf* procedures. The aim is to understand the trends developed in Lombardy major court since 2007, which is supposed to be representative of the first applications, to the present.

Each *Art 160 lf* dossier will be analysed cover to cover. As shown in Figure 2, until now, all 2011 and a good number of the 2012 dossiers have been processed. None of the procedures presented from September 2012 have been included in the sample used to prepare this paper as from that period, the characteristics of dossiers have completely changed, becoming poorer because of the opportunity given to companies to apply without presenting either the plan or the opinion of the independent auditor. We are indeed forced to await the development of the new position obtain useful information. Findings from the early research processing and results are presented in Table 2 using a simple approach for a descriptive analysis.

Figure 2 Number of Art. 160 procedures admitted (see online version for colours)

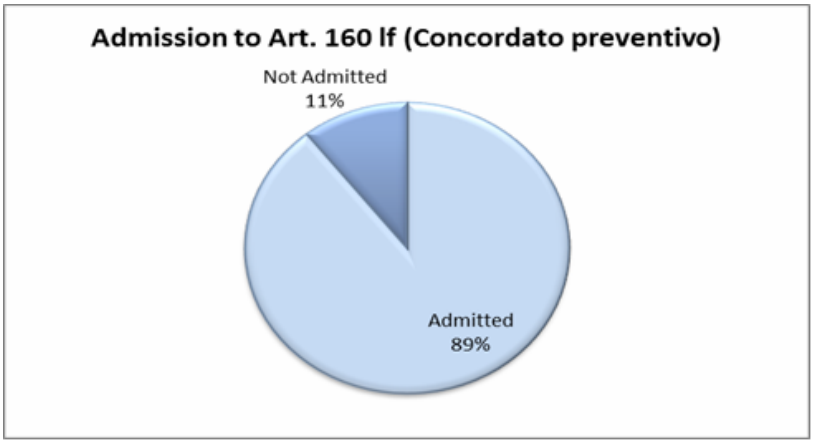


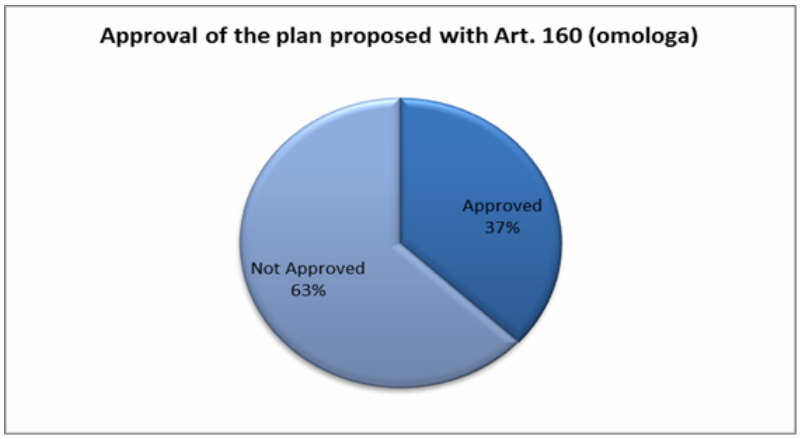
Table 2 Number of Art. 160 procedures analysed (until 3/31/2013)

Year	*No. of Art 160 lf procedures analysed*	*%*
2011	76	55
Up to August 2012	61	45
Total	137	100

The analysis shows that not all applications were admitted: 11% were refused by the court (see Figure 2). This happened when the documents of the application were considered non-compliant with the formal standard.

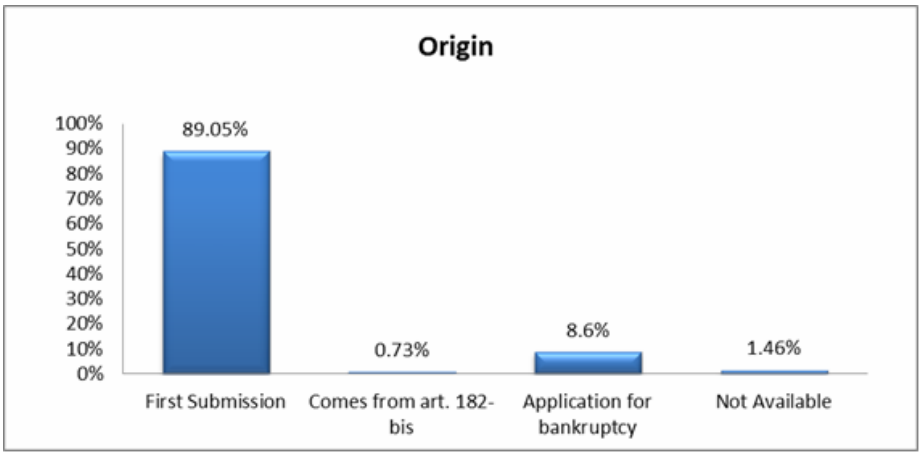
Much more interesting is the final results of the admitted procedures admitted. Only 37% of the them have been successful (see Figure 3). This is a surprising result and suggests that much has to be done by professionals to build adequate agreements and by standard boards and academia to help professionals and companies reaching their goals.

Figure 3 Number of Art. 160 procedures approved (see online version for colours)



Another remarkable result is that 89% of companies that applied for the Art. 160 procedure have not come from a different procedure (e.g., Art. 182 bis), and only about 9% had a pending application for bankruptcy (see Figure 4).

Figure 4 Origins of applications (see online version for colours)



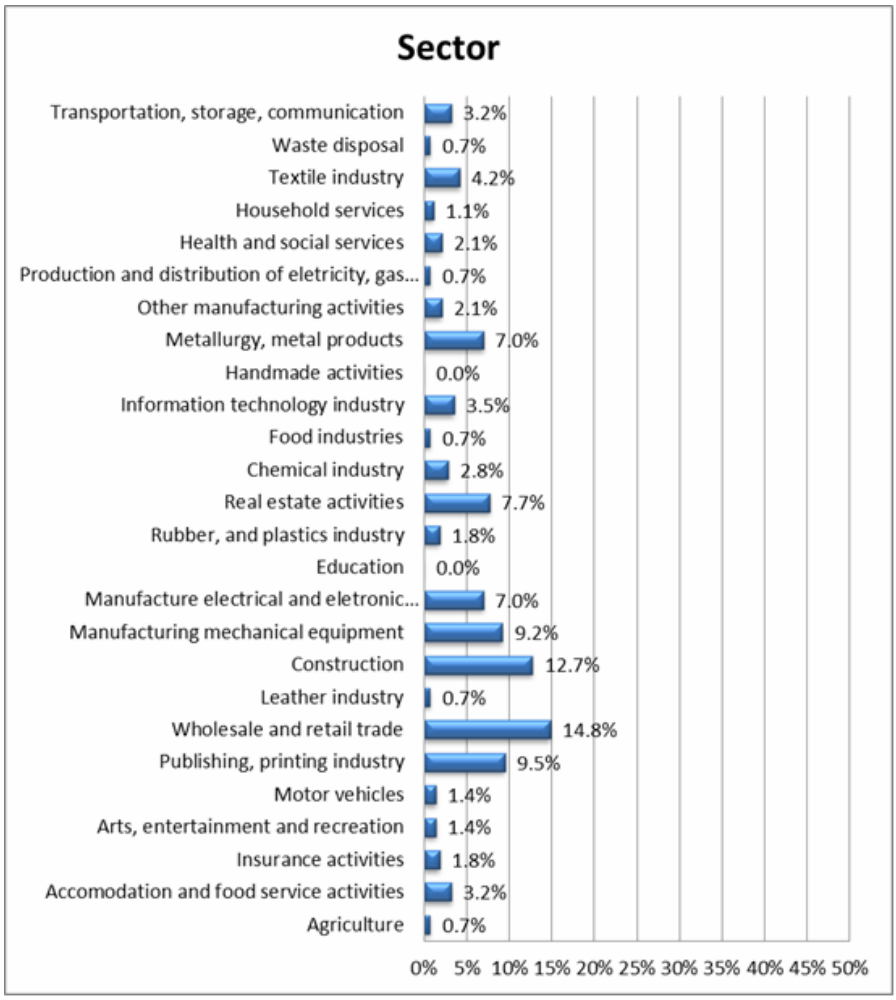
The sizes of the companies in formal re-organisation are generally small. The average revenue is about 15 million euros with about 60 employees (see Table 3). The median data are even clearer in regard to the small size of companies. This special issue is not surprising in the Italian context.

Table 3 Size of companies

	Application submission (previous year)		
	Revenue	*Number of employees*	*Equity*
Average	14,828,068	62	–1,222,427
Median	2,840,550	17	–424,161

In terms of sector membership of the companies, we can confirm the idea that the crisis faced by Italian companies is common to almost all sectors. Applications for Art. 160 have been submitted by companies performed diverse activities in various industries (see Figure 5).

Figure 5 Applicant companies' sector memberships (see online version for colours)



6 Conclusions and future objectives

The data show that newly introduced rules are having an important impact in the Italian context, as they are modifying behaviours. Insolvency situations are becoming visible in advance, which seems to give the opportunity to try to preserve business value.

We are nevertheless aware that this statement needs to be confirmed. For this reason, the next steps of the research we are implementing are designed to determine whether this potential opportunity is turning into effective improvements in the procedure results. Our future research objectives therefore are connected with ongoing plan fulfilment in later years for the procedures included in the sample.

Other interesting considerations and future research could come from the study of various tools that have the purpose of bringing forward the moment of disclosure of financial difficulties. A good example is found in the French *Procedures d'alert*, the implementation of which requires a proactive role and power of courts (*Tribunal de Commerce*) and third parties' time and energies to

a analyse public annual reports of companies enrolled

b call them to a meeting if distress is evident in the index.

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Notes

1 The information included in the disclosure statement, to be considered appropriate, must be completed and articulated. The following seven paragraphs describe the types of information that might be included: 1. Introduction – the statement should provide information about voting on the plan as well as background information about the debtor and the nature of the debtor's operation; 2. Management – It is important to identify the management that will operate the debtor on emergence from bankruptcy and to provide a summary of their background; 3. Summary of the plan of reorganisation – Typical investors want to receive a description of the terms of the plan and the reasons the plan's proponents believe a favourable vote is advisable; 4. Reorganisation value: paragraph 37 SOP 90–7 states that entities that expect to adopt fresh start reporting should report information about the reorganisation value in the disclosure statement; 5. Financial information: audited reports of the financial position as of the date the petition was filed or as of the end of a recent fiscal year, and the results of operations for the past year; a detailed analysis by the debtor of its properties, including a description of the properties, the current values, and other relevant information; and a description of the obligations outstanding with identification of the material claims in the dispute. In addition to the historical financial statements, it may be useful to present a pro forma balance sheet showing the impact that the proposed plan, if accepted, will have on the financial condition of the company. Included should be the source of new capital and how the proceeds will be used, the post petition interest obligation, lease commitments, financing arrangements, and so forth; 6. Liquidation values: Included in the disclosure statement should be an analysis of the amount that creditors and equity holders would receive if the debtor were to be liquidated under Chapter 7. In order to effectively evaluate the reorganisation alternative, the creditors and equity holders must know what they would receive through liquidation. Also, the court, in order to confirm the plan, must ascertain, according to Section 1129, that each holder of a claim or interest who does not vote in favour of the plan must receive at least an amount that is equal to the amount that would be received in a Chapter 7 liquidation. It is not acceptable to state that the amount provided for in the plan exceeds the liquidation amount. The presentation must include data to support this type of statement; 7. Special risk factor: in any securities that are issued pursuant to a plan in a Chapter 11 proceeding, certain substantial risk factors are inherent. It may be advisable to include a description of some of the factors in the disclosure statement (Carmichael et al., 2007).

2 Data are from UNCITRAL (2005, pp.21–31) are devoted to the treatment of out-of-court restructurings and insolvency proceedings. The Legislative Guide on Insolvency Law was prepared by UNCITRAL. The project arose from a proposal made to the Commission in 1999 that UNCITRAL should undertake further work on insolvency law, specifically corporate insolvency, to foster and encourage the adoption of effective national corporate insolvency regimes. The final negotiations on the draft legislative guide on insolvency law were held during the 37th session of UNCITRAL in New York from 14 to 21 June, 2004, and the text was adopted by consensus on 25 June 2004. Subsequently, the General Assembly adopted resolution 59/40 on 2 December 2004.

3 Many authors have focused their research on identification of parameters that can reveal the crises. Since the beginning of the last century, studies on this subject can be identified. Also see Altman (1968) and Altman et al. (1977). For a systematic treatment of the topic in the Italian context, see Teodori (1989).

4 The research was implemented by: Riva, P. (Università del Piemonte Orientale, SAF Scuola di Alta Formazione Dottori Commercialisti Milano), Danovi, A. (OCRI Università Bocconi, Università di Bergamo), Bianco, C. (SAF Scuola di Alta Formazione Dottori Commercialisti Milano), La Manna, F. (President of the Bankruptcy Judges of Milano Court), and Fontana, R. (Bankruptcy Judge of Milano Court). The research was not sponsored and implemented on a voluntary basis.