Debtor – Oriented Bankruptcy Institutions: The Case of Spain

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Abstract

The design of bankruptcy institutions influences the extent to which parties to the defaulted contracts are attracted to judicial procedures (instead of privately renegotiating their contracts). Interestingly, Claessens and Klapper (2005, ALER) show the existence of a large variation in the use of bankruptcy institutions across countries, with rates decreasing in systems which promote restructuring (as opposed to liquidation) and where debtors' management is favoured. While macroeconomic data imply that this is the case in Spain, in our study we use a large firm level dataset to explore for the possible causes. In particular, we present a decision model based on three observable outcomes: restructuring, failed restructuring within the procedure, and direct liquidation. We observe that, once the firm's financial characteristics are controlled for, the initiative of creditors petitioning for bankruptcy (in which case the procedure is legally defined as *necessary*) is positively related with failed restructurings. While attempting restructuring supposes no costs for the owners of unviable firms, but offers them further extension of control, it also results in significant delays of liquidation. We suggest that this delay option acts as a deterrent for creditors' initiative of filing with the procedure, therefore contributing a plausible explanation for the reduced use of Spanish bankruptcy institutions by creditors.

References cited in the Abstract

Claessens, S and L. Klapper (2005) "Bankruptcy around the world: Explanations of its relative use" *American Law and Economics Review*, Vol. 7 No 1, pp. 253-283