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The Fresh Start of the Bankrupt Legal Entity: Myth or Reality

El reemprendimiento de la persona jurídica concursada: Mito o realidad

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Abstract

The recognition of the discharge of unpaid debts at the end of a bankruptcy liquidation procedure in favor of a legal entity (and not only in favor of a natural person) is an innovation of our legal system intended to facilitate the business resumption of the legal entity. In this work we provide empirical evidence to evaluate the effectiveness of this public policy, analyzing the economic activity of more than 600 companies once the respective bankruptcy liquidation procedure is completed. The results show that only a minor subgroup of debtor companies presents some post-bankruptcy economic activity, and that said activity is scarce and temporary, without being demonstrative of a fresh start of the legal entity.

Keywords: *Bankruptcy Law; legal entity; entrepreneurship; liquidation; discharge.*

Resumen

El reconocimiento del descargue de las deudas insolutas al término de un procedimiento concursal de liquidación a favor de una persona jurídica (y no solamente a favor de una persona natural) es una innovación de nuestro ordenamiento jurídico destinada a facilitar el reemprendimiento de la persona jurídica. En este trabajo aportamos evidencia empírica para evaluar la eficacia de esa política pública, analizando la actividad económica de más de 600 empresas una vez terminado el respectivo procedimiento concursal de liquidación. Los resultados muestran que sólo un subgrupo menor de empresas presenta alguna actividad económica post concurso y que dicha actividad es escasa y temporal, sin ser demostrativa de un fresh start de la persona jurídica.

Palabras clave: *Derecho Concursal; persona jurídica; emprendimiento; liquidación; descargue.*

I. INTRODUCTION

The granting of the benefit of discharge in favor of legal entities constitutes a singularity of our legal system, which departs from the universal trend of recognizing this right only for natural persons. In our system, the exoneration of the unpaid balances of the obligations of a legal

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entity at the end of a bankruptcy liquidation procedure has the purpose, as with respect to a natural person, of facilitating a fresh start.[1] However, the resumption of economic activity differs whether it is a natural person or a legal entity. The natural person debtor necessarily continues to exist once the bankruptcy liquidation procedure is completed, so that reintegration into economic activity is essential to obtain the necessary resources for the debtor's own subsistence and that of those in the debtor's care. This human need is not present in the case of a legal person and, therefore, (almost) all legal systems limit the granting of the discharge exclusively in favor of a natural person (*infra* II).

Still, our legal system offers identical legal protection to both the natural person and the legal entity as debtors, by recognizing in favor of both the discharge of unpaid debts after the end of a bankruptcy liquidation procedure as a mechanism to facilitate business resumption (*infra* 3.2.). The granting of the benefit of discharge in favor of a legal entity easing its reintegration into economic activity constitutes an important innovation, placing our country as a pioneer in the development of this public policy.

However, as far as we have been able to find out, as of the closing date of this work, there are no empirical studies aimed at evaluating the results of this innovative public policy. In order to help overcome this gap, the objective of this work is to contribute with empirical evidence that allows us to evaluate whether the discharge is effective in achieving the objective of the public policy of legal entities' business resumption. To this end, the study collects information and analyzes the record of accounting and/or tax movements after the final resolution of a universe of 669 bankrupt companies that correspond to all legal entities that have completed the aforementioned procedure in the period between 2015 and 2020.

The obtained results show that only a subgroup of the aforementioned companies presents any activity after the end of the respective bankruptcy liquidation procedure and, within that subgroup, the activity immediately after bankruptcy is scarce and temporary. In our opinion, the empirical evidence shows, on the one hand, the ineffectiveness of discharge as a mechanism capable, on its own, of achieving business resumption of a legal entity and, on the other hand, the convenience of rethinking whether incentives for business resumption should be formulated in the same way for both natural persons and legal entities.

The rest of this paper is organized as follows: first, the traditional configuration of the discharge rule is analyzed in relation to natural persons (II) and then a review is made on its current application to legal entities as part of a public policy to promote business resumption (III). In the third and central part of this study, the results on the activity registered in a sample made up of 669 bankrupt companies after the end of the respective bankruptcy liquidation procedure are presented and analyzed (IV), after which our conclusions are presented (V).

II. DISCHARGE AND BUSINESS RESUMPTION OF A BANKRUPT NATURAL PERSON

The central element of granting the legal benefit of discharge to natural persons is the protection of human capital, both for humanitarian and economic considerations.[2] After the

[1] A legal entity (like a natural person) is liable with all its assets, present or future, for its debts (article 2465 CC). The legal benefit of the exoneration of unpaid balances at the end of a bankruptcy liquidation procedure (discharge) in favor of a legal entity alters that rule, excluding future assets.

[2] Given that humanitarian considerations are specific to the natural person, in what follows we will focus on the economic justifications for the discharge, which do allow us to illustrate the counterpoints between the discharge in favor of a legal entity or a natural person. The interested reader can find more references to the various justifications for the discharge of a natural person in ALARCÓN (2018), pp. 616-622.

end of the bankruptcy, the assets subject to the bankruptcy of the natural-person debtor have been exhausted; the remaining main asset is the debtor's ability to generate income.[3] If this income must be used to pay bankruptcy creditors, then the debtor's incentive to generate new income will be negatively affected.[4] The discharge frees the debtor's future income from the attack of the bankruptcy creditors, by extinguishing the unpaid balances of her/his credits after the end of the bankruptcy.

In this way, the discharge encourages the debtor's business resumption: reintegration into productive activity and the generation of new income.[5] The discharge brings benefits not only for the natural-person debtor and her/his family environment, but also a social benefit, as the debtor once again contributes with her/his effort to productivity, generates income and thus reduces the cost of social benefits needed to assist people who lack resources to cover their own and family needs.[6]

From the point of view of the creditors, the discharge operates after the assets subject to bankruptcy are exhausted. This exhaustion usually entails a mutation of the creditors' interest: from obtaining the payment of the credits to obtaining the accounting and tax write-off of them (article 41 Decree Law No. 824), so the discharge, in rare cases will affect the creditors' real possibilities of collection.

Due to the above arguments, from its origins until today, the discharge is a legal benefit granted exclusively in favor of a natural person in most of our reference legal systems. Thus, for example, the US Bankruptcy Code expressly prescribes that discharge shall be granted only in favor of an individual.[7] In Europe, Directive 2019/1023, on restructuring and insolvency (DRI) establishes the obligation of Member States to ensure access of any insolvent businessman natural person to a procedure that can lead to full exoneration of debts.[8] In

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[3] WHITE (2005), pp. 2 and 5, who says that the *fresh start public policy* avoids the destruction of incentives for individual productivity in accordance with the author's proposal, in the sense that the revitalization of productivity is the fundamental principle of bankruptcy law.

[4] The Supreme Court of the United States of America had to rule, in *Local Loan Co. v. Hunt* (1934), on whether the assignment as a guarantee of future wages entered into before the initiation of bankruptcy proceedings should be understood to have been extinguished by virtue of the discharge. To support its decision to consider that assignment extinguished, it declared: "When a person assigns future wages, he, in effect, pledges his future earning power" (*Local Loan Co. v. Hunt* (1934), 245).

[5] Recent empirical studies show this. Armor and Cumming demonstrate that a *fresh start public policy* increases entrepreneurship (ARMOR & CUMMING (2008), p. 2).

[6] In this sense Howard points out: "discharge should be broadly available in order to restore the debtor to participation in the open credit economy, limited only as is necessary to prevent the skewing of economic decisions, whether to lend or to borrow, by the intrusion of irrelevant noneconomic factors" (HOWARD (1987), p. 1048).

[7] 11 U.S.C. §727(a)(1). The doctrine fully agrees with this legal policy decision. Thus, Jackson maintains that: "The main advantage bankruptcy offers an individual lies in the benefits associated with discharge" (JACKSON (1986), p. 225).

[8] Following the entering into force of the Directive (EU) 2019/1023 of the European Parliament and of the Council, of 20 June 2019, on preventive restructuring frameworks, debt relief and disqualifications, and on measures to increase the efficiency of restructuring, insolvency and debt exoneration procedures, the notion of "entrepreneur" is limited to any "natural person exercising a trade, business, craft or profession" and it is to that "entrepreneur" that article 20 DRI refers by regulating "Access to discharge." The DRI establishes exemption rules limited to the natural-person businessman, without also including the natural-person consumer, who has been criticized for causing "more problems than solutions given the normal mix of liabilities —domestic and business— found in the assets of the natural-person entrepreneur (CUENA & FERNÁNDEZ (2023), p. 59). However,

accordance with the DRI, the Member States of the European Union have limited the benefit of the discharge to natural persons. Thus, for instance, the Spanish Bankruptcy Law states: "The natural-person debtor, whether a businessman or not, may request the exoneration of unsatisfied liabilities under the terms and conditions established in this law, provided that he is a debtor in good faith" (article 486 Bankruptcy Law, amended by Law 16/2022).[9]

III. THE DISCHARGE OF A BANKRUPT LEGAL ENTITY

3.1. The logic of the discharge in favor of a legal entity

Our legislation considers both natural persons and a legal entities as beneficiaries of the discharge, although there has not been sufficient reflection among us on this comparison —as far as we have been able to investigate.

If the discharge operates as a rule of limitation of liability in favor of a natural person, then this legal benefit with respect to a legal entity is usually already provided for outside the bankruptcy regime.[10] Thus, for example, the partners of a limited liability company are liable for corporate debts up to the amount of their contributions. It makes no sense, then, to grant that legal benefit again now in bankruptcy proceedings.[11]

The creditors of a legal entity, subject to a bankruptcy liquidation procedure, have the right to all of its assets, without distinction between present and future assets (articles 132 and 133 Law No. 20.720).[12] The reason is that, in the case of a legal entity that is a "debtor company", the valuation of its wealth represents the present value of its assets, from which the distinction between present and future assets loses consistency. On the other hand, in the case of a natural person, the aforementioned distinction keeps full value, since human capital is not an asset that is at the disposal of creditors. Since human capital is inherent to every natural person, it makes sense to facilitate its development through a discharge rule.

The conservation of the productive capacity of the assets of a legal entity is achieved in the bankruptcy field through reorganization or, if it is a liquidation, the sale as an economic unit. Both options adequately satisfy both the interest of creditors and the public interest in not destroying the economic value of a bankrupt legal entity, although with notable differences.[13] As far as we are concerned now, the reorganization constitutes a true fresh start for the legal entity that, by rebuilding its liabilities, obtains a "second chance." On the other hand, once the assets have been exhausted in a bankruptcy liquidation procedure, the recipient of those assets (the legal entity) ceases to fulfill the purpose for which it was created and should naturally be extinguished, as happens in other legal systems of reference to ours, in the sense of not granting the discharge in favor of the bankrupt legal entity at the end of the bankruptcy, but rather

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the Directive itself recommends that Member States extend the download to the natural-person consumer (Recital 21 Directive (EU) 2019/1023).

[9] Law 16/2022, of September 5, published in the Official State Gazette" No. 214 of September 6th, 2022. In the same sense, in France, article L711-1, *Code de la consommation*. In Belgium, article 173 §1, *Code de droit économique*. In Germany, § 286 *Insolvenzordnung*. The European exception is the Italian law, which also extends the discharge to a legal entity (*infra* note 15).

[10] BAIRD & JACKSON (1984), p. 110, note 45. Among us, GOLDENBERG (2020), p. 424. The exception in our system is the general partnership.

[11] This is how Jackson has clearly mentioned it: "To talk about the need of a corporation or other business entity to use bankruptcy in order to have a fresh start is to conflate a number of issues, none of which have anything to do with giving an honest but unlucky individual a second financial chance" (JACKSON (1986), p. 4).

[12] BAIRD & JACKSON (1984), p. 110, note 45.

[13] BAIRD & JACKSON (1984), p. 111, note 45.

prescribing its extinction.[14] From the above considerations it follows that it is not easy to find meaning in granting a "second chance" to a legal entity after the end of a bankruptcy liquidation procedure.

Still, the recognition of the legal benefit of the discharge in favor of a legal entity has become natural in Italy since 2017.[15] In this regard, it has been pointed out that "the law peacefully recognizes the existence of an intrinsic value in the organizational structure of companies, because otherwise it would not make sense to cancel the debt of an entity with assets equal to zero," adding "beyond and outside of equity in a strict sense, the organizational structure of the company can also have an economic value."[16]

Regardless of the discussion about whether or not there is a socially valuable asset in the sole organizational structure of a company, what is relevant is whether the discharge is the appropriate mechanism to ensure, by itself, that the legal entity continues to operate in the market after the end of the liquidation procedure, as we will explain below.

3.2. "Business resumption" as public policy

The inspiring purpose of the discharge with respect to a natural person is, as we mentioned, to allow the debtor's reintegration into economic activity and that purpose responds to an extralegal fact: the natural person debtor does not die at the end of the bankruptcy liquidation procedure. Given this unavoidable circumstance, the legal policy decision is to eliminate the debts of that natural person, so that she/he can generate the necessary income to pay for her/his subsistence and that of the family.

Certainly, the discussion is not presented in identical terms when it comes to the extension of the legal benefit of the discharge to a legal entity. The difference lies in the fact that the survival of the legal entity after the end of the bankruptcy liquidation procedure is a decision that belongs exclusively to the legal system, the convenience of which must be judged

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[14] The United Nations Commission on International Trade Law maintains that "[w]here the debtor is a limited liability company, the question of exoneration after liquidation does not arise; In general, the legislation provides for the disappearance of the company as a legal entity or, alternatively, for it to continue to exist, even if it is no longer more than a structure without assets" (UNCITRAL (2006), p. 331). In Spanish Law, the resolution that declares the conclusion of the bankruptcy "due to the completion of the liquidation or due to insufficient assets of the bankrupt legal entity", will order the provisional closure of the registration sheet, which, after one year, will be transformed in definitive closure, unless the bankruptcy is reopened (article 485 LCESp, in accordance with Law 16/2022, reforming the consolidated text of the Bankruptcy Law). In Germany, the opening of bankruptcy liquidation proceedings constitutes a ground for dissolution (§262(1).3. *Aktiengesellschaft*). In a similar sense, Merle maintains, regarding article 1844-7.7 of the *Code de Commerce*, that "*[s]eule la clôture de la liquidation judiciaire pour insuffisance d'actif (...) entraîne automatiquement la dissolution de celle-ci*" (MERLE (2021), §134). In Argentine doctrine, García points out that the rehabilitation of the legal entity "lacks practical use, because once it is liquidated and its registration is canceled, the ideal entity ceases to exist" (GARCÍA (2012), p. 292). In Chile, ÁVILA & CABALLERO (2024), pp. 219-232, have argued that the effects of the end of the bankruptcy liquidation procedure with respect to a legal entity are not expressly regulated and leave the company in a "deadlock."

[15] Articles 8.1 and 9.1, *Legge Delega* n. 155/2017, which introduced the figure under study for the first time in the Italian legal system. With this authorization, the Government issued, on January 12, 2019, Legislative Decree no. 14, reforming the *Codice della crisis d'impresa e dell'insolvenza*, whose current article 280 prescribes, after successive reforms: "*3. Possono accesse all'esdebitazione, secondo le norm del presente capo, tutti i debitori di cui all' article 1, comma 1"; that is, "debitore, if it is a consumer or professionist, any imprenditore che eserciti, also non-profit-making, un'attività commerciale, artisano or agricola, operating as a natural person, legal person or other collective entity, business group or company pubblica, con exclusione dello Stato e degli enti pubblici*."

[16] NIGRO & VATTERMOLI (2021), §317.

to the extent that it satisfies the legal policy objectives taken into consideration by the legislators to establish the discharge rule in favor of a legal entity.

The Message of Law No. 20,720 leaves little room to doubt about what was the public policy that inspired the legal body, in general, and the discharge rule in favor of a legal entity, in particular, by pointing out that it is: "duty of the State to provide the ideal tools to ensure that those ventures that simply lack the necessary entity to persevere can be liquidated in a short time, stimulating the resurgence of the entrepreneur through new initiatives."[17] [18]

By "entrepreneur", the Message includes both natural persons and legal entites: "a scenario that generates the application of the regulations that are intended to be modified is one in which a natural person or legal entity is financially unable to respond to the payment of all its obligations to its creditors and where, additionally, its assets considered together are not enough to settle such debts with the proceeds of their realization."[19] This comparison was probably at the basis of the notion of "debtor company", comprising both legal entities and natural persons, all of them subject to the same discharge regime after the end of a bankruptcy procedure for the liquidation of a debtor company.

For all of the above, the purpose of the public policy of discharging a legal entity is also to facilitate its reintegration into economic activity: the business resumption of bankrupt legal entities. Whether the discharge alone manages to achieve that goal in reality is the subject to which we dedicate the third part of this study.

IV. EMPIRICAL STUDY OF A PUBLIC POLICY DECISION

4.1 Literature review

Various empirical studies with a quantitative approach address the effects on business activity of regulatory changes in bankruptcy liquidation procedures.[20] The models presented by Landier reveal that lenient bankruptcy liquidation procedures, where the closure of an

[17] BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE (2021), p. 4. In another step of the Message it is read: "For the reasons stated above, our Government has taken charge of the need to carry out a profound reform in bankruptcy matters, to allow entrepreneurs to re-emerge when a project fails, and tend to eliminate the negative burden of a failed business" (BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE (2021), p. 7).

[18] An alternative idea about the purpose of the discharge of a legal entity can be constructed as follows: the purpose of the discharge of a legal entity is to release from liability those liable under guarantee. Once all the social assets affected by the bankruptcy have been liquidated, secured creditors may continue to demand payment of their debts against the guarantors. In this scenario, the discharge of the debts of a legal entity would allow those obligated to guarantee to be released, as the main obligation is extinguished as a result of the discharge. Thus, for example, the partner or majority shareholder who granted a personal guarantee to secure the payment of a company loan, later insolvent, after the end of the bankruptcy liquidation procedure, could see his liability extinguished as a result of the discharge of the main obligation. One of us has taken it upon himself elsewhere to specify that the effects of the discharge do not benefit those obliged to guarantee, despite the vacillations of the jurisprudence (CABALLERO & GOLDENBERG (2021), pp. 57-71). Recently, Law No. 21,563 has settled the matter, expressly excluding guarantors from the benefit of the discharge, so that this alternative purpose of the discharge of a legal entity must be discarded.

[19] BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE (2021), p. 4.

[20] AUDRETSCH (2003), pp. 30-31. The author describes a flow of determinants of business activity, among which he mentions: social, economic, political, and cultural factors, as well as emphasizing the risk and reward that entrepreneurs weigh to determine whether to undertake or abandon the business. The latter include the regulation of bankruptcy liquidation procedures, taxes, subsidies and regulation of the labor market.

unsuccessful business and a new start are more expeditious, encourage entrepreneurs to develop new business projects.[21]

An analysis that considers data from self-employed workers from fifteen countries in North America and Europe, carried out by Armor and Cumming, demonstrates that lenient bankruptcy liquidation procedures have a statistically and economically significant positive effect on entrepreneurship, being more relevant even than other factors, such as real GDP growth.[22] Peng *et al.* highlight that more benevolent bankruptcy liquidation procedures not only reduce the barriers to exiting the market, but also reduce the barriers to entry. The authors raise the question of how many entrepreneurs could be deterred by harsh bankruptcy laws, missing out on business ideas and entrepreneurial opportunities.[23]

On the other hand, some studies reveal that the effects on business activity of the regulation of lenient bankruptcy liquidation procedures would be small in magnitude or not as optimistic as those mentioned above. Among these are the results obtained by Meh and Terajima, who, after developing a quantitative model of consumer and business bankruptcy liquidation procedures, show that eliminating the exclusions of assets from bankruptcy would produce a modest increase in entrepreneurs.[24]

Although, as just stated, there are various empirical studies with a quantitative approach in the literature addressing the effects of regulatory changes in bankruptcy liquidation procedures on business activity, none of them address the effects of the discharge of a legal entity. This work constitutes an unprecedented contribution to quantitative studies of the effects on business activity of regulatory changes in bankruptcy liquidation procedures, specifically, with respect to the application of discharge in favor of legal entities.

4.2 Statistical process

The construction of a database that would allow empirical evaluation of the effectiveness of the discharge to achieve the objective of the public policy of business resumption of a legal entity after the end of a bankruptcy liquidation procedure followed several stages. First, information was collected, and some characterization data was obtained from the Superintendence of

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[21] LANDIER (2005), pp. 20-21, who models an economic explanation for the stigma of failure of those who undergo liquidation procedures, obtaining that, in scenarios where the cost of capital is lower, entrepreneurs fail more often, experiment to a greater extent and create more companies with great prospects.

[22] ARMOR & CUMMING (2008), pp. 310-315 and 331, who carry out a panel analysis, where they measure the leniency of the regulation of bankruptcy liquidation procedures through five variables: discharge availability in the country; time until discharge occurs; level of exemptions (debtor's assets excluded from bankruptcy); disabilities (civic, economic, freedom, etc.) and composition (level of difficulty of the debtor in achieving a discharge by agreement with the creditors).

[23] PENG *et al.* (2010), pp. 520-521 and 525, who compare data on the regulation of bankruptcy liquidation procedures from various countries under six dimensions that differ in terms of ease of use for entrepreneurs: availability of reorganization; time spent on bankruptcy proceedings; the cost of these; opportunities to obtain a *fresh start* with liquidation; obtaining the automatic suspension of procedures and actions during the reorganization; and permanence of managers and entrepreneurs in their jobs after the reorganization has started. It turns out that the most modern and lenient bankruptcy laws, measured through these dimensions, become a tool of business activity for policy makers, since they can even increase the probability that foreign capital invests in new companies.

[24] MEH & TERAJIMA (2008), pp. 19-20, who propose that eliminating the debtor's assets excluded from bankruptcy liquidation procedures implies that the only benefit of the bankruptcy liquidation procedure would be the discharge of the debt. This modification in the regulation would only produce a 5.7% increase in companies and a 32.5% decrease in bankruptcy filings.

Insolvency and Business Resumption (SUPERIR) on all the legal entities that completed a bankruptcy liquidation procedure in the period between 2015 and 2020 (2.1.). Second, this background data was complemented with the extraction of public information on the companies from the Internal Revenue Service (SII) (2.2.). Finally, this data was complemented with additional data obtained directly from computers located at the SII offices (2.3), as will be explained below in the same order.

4.2.1 Background collection

The study included all legal entities which had final resolution of a bankruptcy liquidation procedure, between the years 2015 and 2020 (hereinafter, also, "bankrupt companies"). This universe corresponds to 669 bankrupt companies, whose data was provided by SUPERIR.[25]

The SUPERIR has information on the bankrupt companies at the beginning of the bankruptcy liquidation procedures, from which it is possible to characterize them as follows: the bankrupt companies are concentrated in the wholesale and retail trade sector (28.7%); manufacturing industries (18.8%) and construction (16.3%) well above agriculture, livestock, forestry and fishing (5.8%) and professional, scientific and technical activities (5.1%). The remaining ones (24.4%), with a representation of less than 5% for each area, are concentrated in twelve other areas, while the rest 0.9% had no information (Table 1).

[25] The provision of data by SUPERIR was carried out within the framework of a collaboration agreement between it and the Faculty of Law of Universidad de Chile.

Table 1
Economic sectors of bankrupt companies

Economic sectors	Number	Percentage
Accommodation and meal service activities	27	4.0%
Human health care and social assistance activities	6	0.9%
Administrative and support services activities	26	3.9%
Financial and insurance activities	10	1.5%
Real estate activities	10	1.5%
Professional, scientific and technical activities	34	5.1%
Agriculture, forestry and fishing	39	5.8%
Wholesale and Retail; repair of motor vehicles and motorcycles	192	28.7%
Construction	109	16.3%
Teaching	12	1.8%
Exploitation of mines and quarries	11	1.6%
Manufacturing industries	126	18.8%
Information and communications	26	3.9%
Other service activities	9	1.3%
Water supply; wastewater evacuation, waste management and decontamination	6	0.9%
Supply of electricity, gas, steam and air conditioning	1	0.1%
Transportation and storage	19	2.8%
No information	6	0.9%
Total	669	100.0%

Source: Own elaboration based on data from SUPERIR

Regarding the size at the beginning of the bankruptcy liquidation procedures of the bankrupt companies (Table 2), the highest concentration occurs in small (42.0%), micro (21.8%) and medium-sized companies (16.3 %), jointly called "smaller companies" (article 2 Law No. 20,416), which represent 80.1% of the cases, far above large companies with just 9.1%.[26]

[26] 0.3% of bankrupted companies are classified as second category taxpayers, which is explained because, at the time of collecting the data for this investigation, Law No. 20,720 considered in the definition of debtor company both private legal entities, and natural persons taxpayers of either first category or included in number 2 of article 42 of Decree Law No. 824, of the Ministry of Finance (1974).

Table 2
Size of bankrupt companies

Size	Number	Percentage
Large	61	9.1%
Medium	109	16.3%
Small	281	42.0%
Micro	146	21.8%
No Sales	1	0.1%
Second category	2	0.3%
No information	69	10.3%
Grand Total	669	100.0%

Source: Own elaboration based on data from SUPERIR

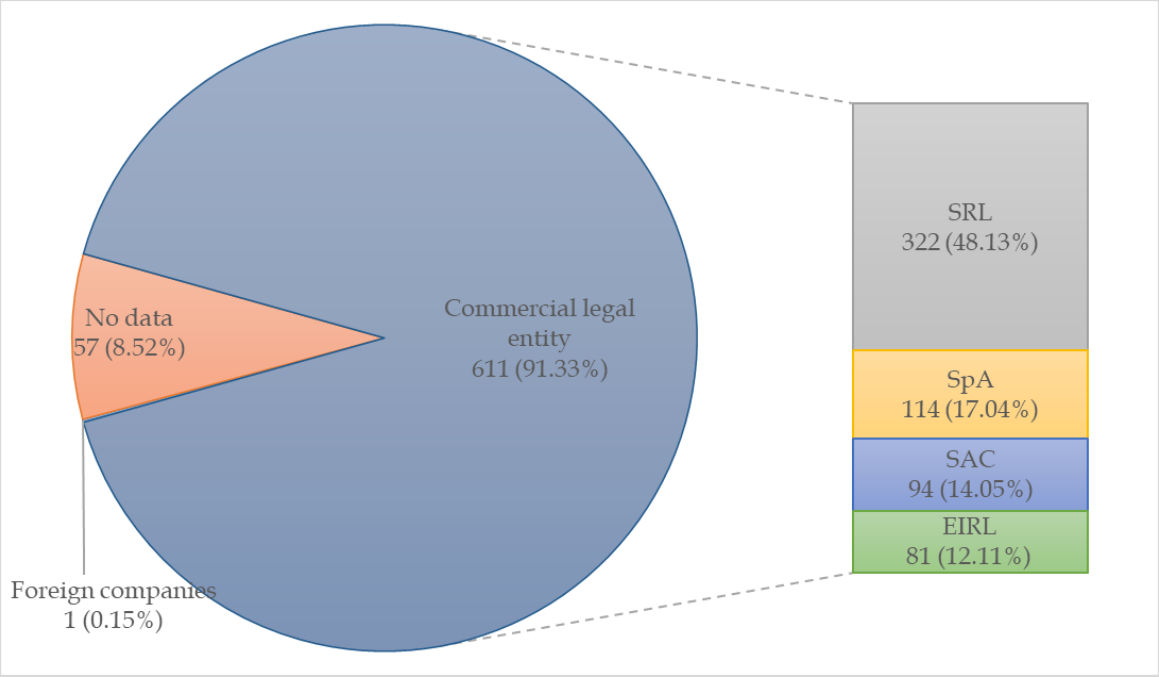
4.2.2 Collection of new data

The characterization of the bankrupt companies was enhanced with public information from the SII,[27] not available in the data stored by SUPERIR, obtaining that these correspond mainly to taxpayers classified as "commercial legal entities."[28] (91.33 %). In turn, commercial legal entities are disaggregated into four subtypes of taxpayers: limited liability companies, SRLs (48.1%); joint-stock companies, SpA (17.0%); closed corporations, SAC (14.1%) and individual limited liability companies, EIRL (12.1%).

[27] Payrolls of companies which are legal entities, commercial years 2015-2020. Available at https://www.sii.cl/sobre_el_sii/estadisticas_y_estudios_del_sii.html

[28] The taxpayers included within the notion of "commercial legal entities" cover entities as dissimilar to each other as an investment fund and a civil general partnership. The list is available in Form 4415 SII (https://www.sii.cl/formularios/imagen/F4415.pdf).

Figure 1
Distribution of companies, according to SII classification: taxpayer type and subtype



Source: Own elaboration based on data from SUPERIR and SII

4.2.3 Data integration

The data on the bankrupt companies described above was merged with information provided by the SII. This information could be obtained thanks to a work protocol agreed by the SII and SUPERIR. In accordance with this protocol, the SII made available a computer in a venue of the same service containing unnamed, undepurated tax information on the bankrupt companies.[29] Using this computer, data was collected from stored files corresponding to various years of the Income Declaration form (Form 22, F22)[30] and the Monthly Declaration and simultaneous payment of taxes form (Form 29, F29).[31] Data was also collected from stored files of Notice and declaration about termination of line of business (Form 2121, F2121),[32] Affidavit No. 1887[33] and other files containing characteristics of the bankrupt companies, such as date of start of activity, economic activity, company size and location on the date of data gathering. The results of the data analysis are shown in the next section.

[29] On August 2, 2021, a work protocol was signed between the SII and SUPERIR. This agreement allowed access to the SII offices to extract information during a period of six months, which lasted from September 2021 to February 2022.
[30] Form 22 is the document that certifies that first and second category taxpayers have reported the income obtained during the previous year.
[31] Form 29 corresponds to monthly tax returns that, legally, must be withheld and entered into tax coffers, for example, Value Added Tax (IVA) and Monthly Provisional Payments (PPM), among others.
[32] Form 2121 is the document that allows to formally notify the SII about the termination of activities or commercial/industrial line of business.
[33] Affidavit No. 1,887 corresponds to the information on income from salaries, other remuneration components and withholdings of the second category single tax of the Income Law (LIR).

4.3 Results

4.3.1 Results from company tax returns

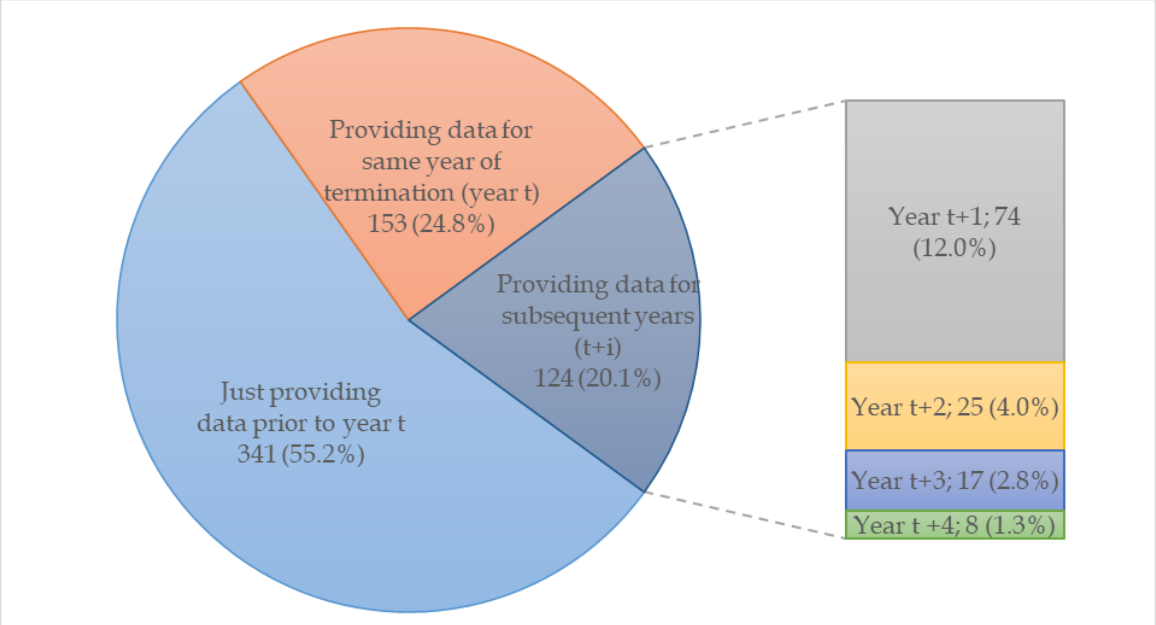
The processing of the information provided by the SII and SUPERIR under the parameters indicated in the previous section showed that 618 of the 669 (92.4%) companies (hereinafter, "companies") present, at least, a F22 during the years 2015 to 2020; 664 companies (99.3%) present at least one F29 in the period between January 2015 and April 2021; and, adding all the information, 120 companies register movements in both forms in at least one year after the end of the bankruptcy liquidation procedure.

A. INCOME TAX RETURN RESULTS: FORM 22

For first and second category taxpayers, it is mandatory to present the Income Declaration in April of each year, through F22, to account for the income obtained during the previous year.[34]

Of the total number of companies that submitted the F22 declaration (618 companies), 124 registered movements in some F22 submitted after the end of the respective bankruptcy liquidation procedure $(t + i)$, representing 20.1% of the companies with information on this form; 153 companies registered movements until the year of termination, corresponding to 24.8% (t) and 341 companies only had information prior to the end of the respective bankruptcy liquidation procedure (55.2%), i.e., years $(t - i)$.

Figure 2
Business distribution, according to availability of information in Form 22



Source: own elaboration based on gathered data

[34] For Second Category taxpayers, there are some exceptions established in Decree Law No. 824.

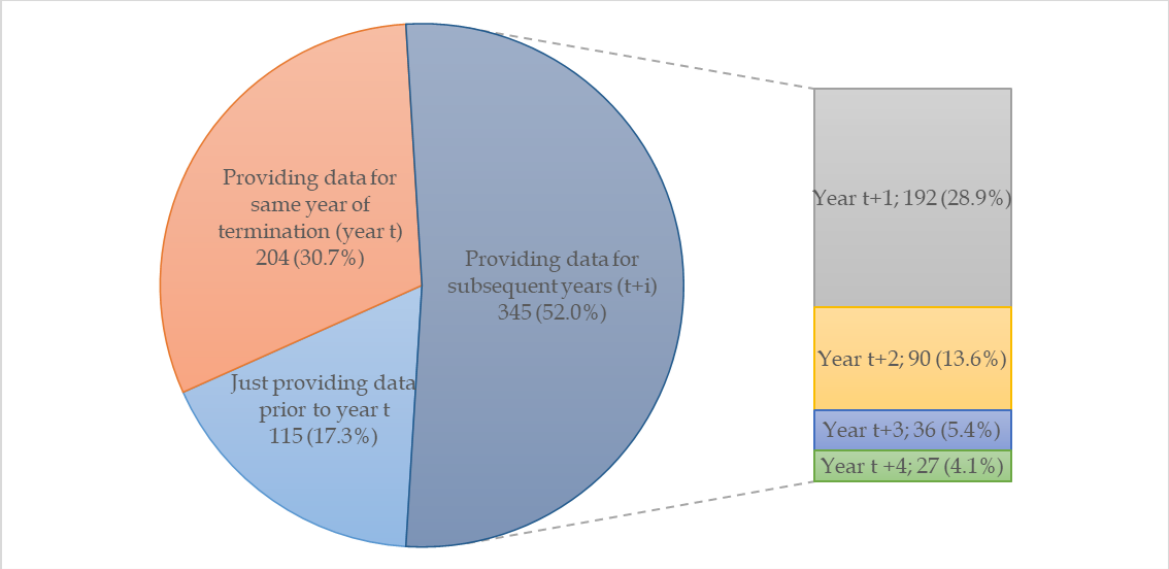
As shown in Figure 2, 124 companies register movements in F22 after the respective termination year (20.1%).[35] For those companies, an important decrease in movements is observed in the disaggregated data for the years following the termination year (t); in fact, there are just 8 companies (1.3%) presenting data in the fourth year $(t + 4)$.

B. Monthly declaration results and Simultaneous Payment: Form 29

In F29, better known as the monthly declaration of Value Added Tax (IVA) declaration, taxpayers must declare and pay monthly taxes resulting from sales, purchases, exempt sales and exports and other second category withholding taxes, the single tax on workers, mandatory monthly provisional payments, additional contributions and credits and remainders from construction companies.[36]

A total of 664 companies submitted the F29 declaration. Out of them, 345 register movements in the F29 submitted after the end $(t + i)$ of the respective bankruptcy liquidation procedure (52.0% of the total); 204 companies (30.7%) show movements up to the end year (t) and 115 companies only have previous information $(t - i)$ at the end of the respective bankruptcy liquidation procedure (17.3%).

Figure 3
Number of companies, according to availability of information in Form 29



Source: own elaboration based on gathered data

Unlike the notorious decrease of companies with registered activity after termination in F22, it is observed that in F29 more than half of the companies continue to present it after the end of the respective bankruptcy liquidation procedure (52%).[37] However, matching the trend

[35] From the data extracted from SII for these companies, it can be observed that most of them do not declare sales (60.5%), they are from the wholesale and retail trade sector (35.1%), they are located in the Metropolitan Region (84.2%), and they have an average lifetime of 11.6 years.
[36] SII (n.d.), voice "Declaración de IVA."
[37] From the data extracted from SII, it can be observed that most of these companies do not have sales (58.7%), they belong to the wholesale and retail trade sector (28.6%), they are located in the Metropolitan Region (84.5%), and they have an average lifetime of 11.8 years.

shown in Fig. 2, the detailed data for F29 after the end year of the respective bankruptcy liquidation procedure, displayed in Fig. 3, show a concentration of the movements carried out in the first year after termination (28.9% of the total companies that register movements after the end of the liquidation in F29) and a marked decrease in the following years until reaching, in the fourth year, just 27 companies (4.1%).

4.3.2. Results by economic activity variables during period $(t + i)$

The movements in F22 and F29 after the end of the respective bankruptcy liquidation procedure, presented in the previous section, show activity in a subgroup of companies. However, they do not provide enough information to claim these records reflect the resumption of economic activity by the aforementioned companies. In order to determine whether these companies resumed their economic activity, the following tasks were carried out:

a) select, according to the availability of information, variables from F22 and F29 (shown in Table 3) whose movement after the end of the corresponding bankruptcy liquidation procedures exposes, via tax payment, the reintegration into the economic activity of the debtor company; and

b) verify the existence of accounting and/or tax movements of the companies after the end of the respective bankruptcy liquidation procedures, i.e., verify activity in periods $(t + i)$.

Table 3
Selected codes from F22 and F29, to determine accounting and/or tax movements

Form	Code	Variable
F22	C87	Requested refund
	C91	Total to pay
	C643	Taxable Net Income (or Tax Loss)
	C645	Positive Tax Equity
	C646	Negative Tax Equity
F29	C91	Total to pay within legal deadline/Taxes
	C537	Total Credits/Purchases
	C538	Total Debits/Sales

Source: own elaboration

4.3.2.1 Verification of accounting and/or tax movements

Seven of the eight variables (codes) selected from F22 and F29 have at least one company presenting some movement after the end of the respective bankruptcy liquidation procedure (Table 4). For four of the F22 codes —Requested refund (C87), Total to pay (C91), Positive tax equity (C645) and Negative tax equity (C646)—, less than 1% of the companies show movement, in some year after the completion of the procedure.

Concerning F29, movements are observed after the end of the respective bankruptcy liquidation procedure in the three chosen codes: Total payable within the legal deadline (C91), Total credits (C537) and Total debits (C538). In this last case, 133 companies show movement in the variable credits or purchases after the end of the bankruptcy liquidation procedure,

which amounts to 20% of the companies with information in F29, the highest percentage of activity recorded in the sample.

Table 4
Number of companies with movements in variables of interest from F22 and F29

Form	Code	Variable	No. companies with movement after the end year (year t)	Percentage of total companies with F22/F29
F22 n=618	C87	Requested refund	2	0.3%
	C91	Total to pay	1	0.2%
	C643	Taxable Net Income (or Tax Loss)	0	0.0%
	C645	Positive Tax Equity	4	0.6%
	C646	Negative Tax Equity	2	0.3%
F29 n=664	C91	Total to pay within legal deadline/Taxes	5	0.8%
	C537	Total Credits/Purchases	133	20.0%
	C538	Total Debits/Sales	3	0.5%

Source: own elaboration

Figure 4 shows the companies with some movement in any of the eight variables chosen up to four years after the completion $(t + 4)$ of the respective bankruptcy liquidation procedure, a situation that occurs significantly only with respect to the variable Total credits or purchases of the F29.[38]

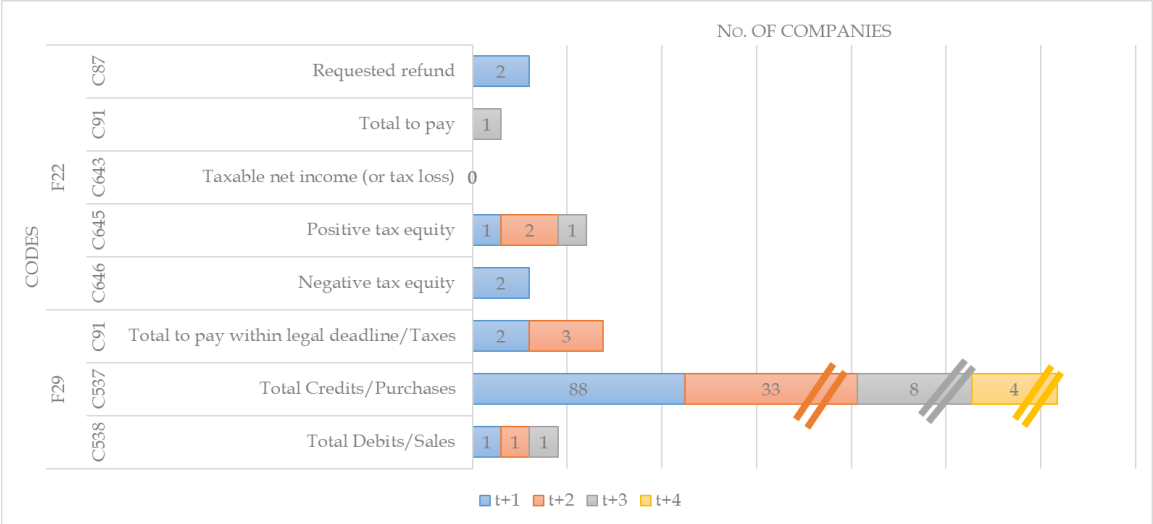
Meanwhile, in the variables Total to pay (C91) and Positive tax equity (C645) of F22, only two companies present movements up to three years after the end of the liquidation $(t + 3)$. This is repeated for a company in the variable Total debits/sales (C538) of F29.

On the other hand, in the variable Total to pay within the legal deadline/Taxes (C91) of F29, three companies exhibit movements, and these occur up to two years after the end of the procedure $(t + 2)$.

Both in the variable Requested refund (C87) and in Negative tax equity (C646) of F22, the four companies with movement after the respective end of the bankruptcy liquidation procedure carry out that activity only up to one year after this.

[38] In Fig. 4, stacked bars cut with the "//" symbol represent those values that present a high level of deviation with respect to the remaining bars, showing proportionally the distribution of debtor companies in the variable of interest.

Figure 4
No. of companies presenting movements after the end of the liquidation in variables of interest of F22 and F29, according to the years in which movements are recorded



Source: Own elaboration

We must highlight that none of the companies had presented their declaration about termination of line of business by the end date of the information extraction[39] from the data fusion obtained from the SUPERIR and the stored files of Notice and declaration about termination of line of business (F2121) provided by the SII.

In summary, after analyzing the selected variables of F22 and F29, the results show that 137 companies presented economic activity after the year of completion of the respective liquidation procedure. The distribution of said activity varies depending on the form. In F22, only one company shows movement in two variables, and two companies in one variable. Concerning F29, 128 companies register movement in one variable; a company in two variables; and a company in three variables. Finally, some companies present subsequent movements in both forms (F22 and F29): two companies with movements in two variables; a company in four variables; and a company in five variables.

V. CONCLUSIONS AND LIMITATIONS OF THE STUDY

The results of the study allow us to claim that legal entities that have benefited from the discharge of their debts after the end of a bankruptcy liquidation procedure do not resume their economic activity.

To reach this conclusion, the research shows two relevant results. The first refers to companies which do not show any movement in the years following the end of the respective bankruptcy liquidation procedure. In the case of F22, 494 (80%) of a total of 618 companies do not show accounting and/or tax records reflecting any activity after the end of the respective bankruptcy liquidation procedure. In the case of F29, this group reaches 319 (48%) of a total of 664 companies. With these results, it can be stated that a significant portion of the companies

[39] The extraction of information ended in February 2022 (note 29).

cease to have economic activity registered in accounting and/or tax terms in the same year in which the discharge occurs, without data showing a subsequent resumption of business activity.

The second relevant result deals with the subgroup of companies with a record of accounting and/or tax movements in the years following the end of the respective bankruptcy liquidation procedure, in order to evaluate whether this activity is indicative of reintegration into economic activity (fresh start). The observed trend is that the accounting and/or tax records that reflect economic activity decrease annually, until they practically disappear in the fourth year after the end of the bankruptcy liquidation procedure $(t + 4)$. In fact, 24.8% and 30.7% of the companies only show movements in F22 and F29, respectively, the same year as the end of the corresponding bankruptcy liquidation procedure. Regarding those legal entities with movements after the end of the respective bankruptcy liquidation procedure in the case of F22, 74 companies show tax or accounting records in the first year after the end, but only 8 in the fourth year. In the case of F29, in the year following the end of the bankruptcy liquidation procedure, 192 companies show tax or accounting records, but only 27 in the fourth year. These records after the end of the bankruptcy liquidation procedure do not account for the reintegration of the bankrupt legal entities into economic activity, but rather for their progressive disappearance, probably revealing the inertia of the economic activity carried out before and during the bankruptcy liquidation procedure, but not a rebirth of the debtor legal entity.

The empirical verification of the discharge being ineffective, on its own, to achieve the objective of the public policy of business resumption of the bankrupt legal entity could be explained around two ideas. The first lies in the stigma that would continue to weigh on bankrupt persons, who would *de facto* cease to be subject to credit, preventing them from restarting, due to the bad reputation associated with bankruptcy liquidation (*decoctor ergo fraudator*), despite the intention of the legislators of Law No. 20,720 to promote a cultural change in this matter.[40] The second explanation, compatible with the previous one, points to the lack of economic value of the legal entity, as a legal structure, for its owners after the end of the liquidation procedure. Once the valuable assets have been liquidated, it would no longer be attractive for the owners of the company to resume economic activity through that same legal structure, despite having carried out the discharge in favor of the legal entity, especially if the costs of establishing a new legal structure are low.[41]

The results of this study call into question the effectiveness of designing incentives for business resumption in identical terms for both the legal entity and the natural person. In the case of a natural person, given that, after the end of the bankruptcy liquidation procedure, she/he necessarily survives and must generate income to satisfy her/his needs and those of her/his family (*supra* 3.2), the discharge appears as an appropriate instrument to alleviate that

[40] One of the objectives of Law No. 20,720 was precisely "to eliminate the stigma caused by bankruptcy" (BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE (2021), p. 205), regarding which there was a broad consensus: the word "stigma" and its consequences are mentioned 19 times during the legislative process. The President of the Republic, in the speech promulgating Law No. 20,720, affirmed the existence of a culture that stigmatizes the bankrupt debtor and emphasized that Law No. 20,720 would change that vision, understanding insolvency as a normal fact (BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE (2021), pp. 3383-3384).

[41] According to the Registry of Companies and Societies (colloquially known as "Company in a day"), the constitution of a company as a legal entity in Chile may have no cost if the portal of the Registry of Companies and Societies is used and the interested parties have accounts with advanced electronic signature. See their website https://www.registrodeempresasysociedades.cl/AyudaRegistro.aspx.

reality. On the other hand, for the bankrupt legal entity, restarting is an option, not a necessity. This study contributes with empirical research to verify that legal entities after the discharge of their debts do not resume nor formally terminate their economic activity, subsisting as a "ghost" legal entity.[42] The above shows that regulating in the same way the incentives for the resumption of a natural person and a legal entity does not seem reasonable, since the natural person must reintegrate into economic activity due to a vital need. If it is intended that the insolvent legal entity effectively restarts after the end of the bankruptcy liquidation procedure, discharge is not, by itself, an effective mechanism to stimulate that decision. That is probably the reason why other legal systems opt for the extinction of the legal entity after the end of the bankruptcy liquidation procedure (*supra* 3.1).

This research constitutes progress regarding the level of knowledge of the situation of companies once the respective bankruptcy liquidation procedure is completed; however, this study has limitations.

One of these limitations concerns access to information about companies subject to a bankruptcy liquidation procedure. Such information is not open to researchers external to SUPERIR, which prevents access to the data for other studies with similar objectives.

Furthermore, the protocol agreed upon for the purposes of this investigation between SUPERIR and the SII stipulates that, to ensure the confidentiality of the information declared by taxpayers, as well as the protection of personal data, the results of the extractions carried out on the equipment provided to the researchers cannot allow any contributor to be implicitly or explicitly identified.[43] These restrictions limit the possibility of cross-referencing information with other sources, as well as the opportunity to deepen the investigation regarding specific cases.

Additionally, this research is limited to empirically verifying that discharge is not, by itself, a suitable incentive to achieve the business resumption of a legal entity, leaving pending for future research the analysis of the impact that other relevant economic factors could have for the decision of the legal entity to continue with its economic activity after the end of the bankruptcy liquidation procedure.[44]

Finally, a future investigation could determine whether the partners of companies that end a bankruptcy liquidation procedure constitute new companies and reintegrate themselves into economic activity through them, information which is not available in either the SUPERIR or the SII.

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[42] This is clear from additional data provided by our study: none of the legal entities benefiting from the discharge of their debts declared the termination of the line of business before the SII (section 0), so that, post-insolvency, these legal entities are still legally alive, but economically dead.

[43] The agreement establishes that the combination of all the used variables cannot produce unique records, that is, results in which there are less than eleven taxpayers.

[44] Among the literature that has dealt with the factors that affect resumption after the end of a bankruptcy liquidation, IBÁÑEZ (2021) shows the results of a national analysis, which reveals that bankrupts have a lower probability of creating a new company with respect to those who close their businesses for other reasons. Also, in CORNER *et al.* (2017), the characteristics possessed by those who have experienced the failure of a company and restart it are addressed, where resilience becomes relevant as one of the predominant attributes among them. Likewise, in COSTA *et al.* (2023) business failure is studied as a phenomenon, showing that the possibility of re-entering economic activity is subject to learning that promotes resilience, but also to the fear that the person who undertakes has, with age being a relevant factor, since at older age, the lower the probability of re-entry into economic activity.

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