



BANKRUPTCY LAW AND RESTRUCTURING

The newly enacted decree amending the Italian Insolvency Code: towards greater efficiency and effectiveness of the crisis and insolvency legal framework

A legislative decree amending and supplementing the Italian Insolvency Code (the “Decree”) was published in the Official Gazette on 27 September 2024, effective from the day following its publication.

The main novelties enacted by the Decree are aimed at facilitating the implementation of the crisis management tools set out in the Italian Insolvency Code, with a focus on the **negotiated composition** (*composizione negoziata*). The negotiated composition has been introduced in order to allow the debtor to negotiate with its creditors and other relevant stakeholders – in a protected environment and under the supervision of an expert appointed by the Chamber of Commerce – a solution aimed at overcoming its situation of financial distress, also through the transfer of the whole business or a branch thereof.

In relation to the negotiated composition, the Decree enacts a number of rules which have a considerable impact on the operation of **banks and financial intermediaries**, among which:

- (a) the access by the debtor to the composition does not constitute in itself ground for a different classification of its financial exposures;
- (b) a different classification of the financial exposures of the debtor is legitimate if determined taking into account the provisions of the draft recovery plan presented by the debtor in the context of the negotiations and the prudential supervisory regulations;

- (c) the confirmation of credit facilities is not in itself a reason for the relevant banks and financial intermediaries to incur into liabilities towards the debtor and its other creditors for so called “abusive financing”;
- (d) if the debtor requests and obtains protective measures in order to preserve its assets, banks and financial intermediaries cannot suspend access to credit facilities granted prior to the beginning to the negotiated composition, unless they prove that such suspension is imposed by banking supervisory regulations;
- (e) the debtor can obtain a Court’s authorisation for the purpose of accessing super-senior financing, and such authorisation may also be obtained in relation to the issuance of guarantees or to the reactivation of previously suspended credit facilities.

In addition, the Decree clarifies the **possible outcomes** of the negotiated composition, providing that such procedure will be considered completed with positive outcome if, alternatively:

- (a) the debtor executes an agreement with its creditors and/or its relevant **stakeholders** on the basis of what agreed in the context of the negotiated composition. By including a reference to the stakeholders as parties to such agreement, the legislator makes it clear that the completion of the negotiated composition can also take place through the execution of an agreement with a third party for the sale of debtor’s business (whilst, prior to the reform, the Italian Insolvency Code was silent on this aspect); or
- (b) the debtor enters into a moratorium agreement with its creditors; or
- (c) the debtor approves a business recovery plan (*piano di risanamento*) ensuring the overcoming the situation of distress of the debtor, the feasibility of which plan will be certified by an independent expert appointed by the same debtor.

The Decree also enacts some important amendments to the **composition with creditors** (*concordato preventivo*), by introducing, among others, new provisions under which:

- (a) the debtor may request to the Court *ad hoc* protective measures in order to counter, not only judicial and enforcement actions started by the creditors, but also mere conducts potentially detrimental to the successful outcome of the proceedings;
- (b) financial resources provided by third parties (including shareholders) may be freely utilised to repay the indebtedness irrespective of the ranking among debts, whether super-senior, secured or unsecured;
- (c) it is provided a reduction from 10% to 5% of the percentage of creditors allowed to submit a plan and a proposal as an alternative to those filed by the debtor, with the aim of achieving a better solution for overcoming the situation of crisis by facilitating the competitiveness between the debtor’s proposal and alternative ones, which may prove of greater satisfaction also with respect to the satisfaction offered to the generality of the creditors;
- (d) after the homologation of the proceedings by the Court, the debtor can amend the composition plan if necessary to maintain its feasibility also with regard to the satisfaction promised to the creditors, through a simplified procedure before the Court which allows greater flexibility in the implementation phase of the plan.

The Decree pays particular attention to the treatment of tax claims in the context of all crisis management tools. More specifically, the newly enacted rules introduce the possibility for the debtor:

- to enter into a tax settlement for writing-off or rescheduling tax claims – with varying scope, limitation and conditions – in the context of the negotiated composition (*composizione negoziata*); this possibility was previously exclusive of in-Court insolvency proceedings such

as the debt restructuring agreement (*accordo di ristrutturazione dei debiti*) and the composition with creditors (*concordato preventivo*);

- to have a tax cram down in case of composition with creditors on a going concern basis (*concordato preventivo con continuità aziendale*). Pursuant to the new provisions, the Court-approval of such a composition with creditors entailing the write-off and/or rescheduling of tax claims may occur even if the dissent of the tax creditors would otherwise prevent from reaching the majority of creditors' vote required for such approval; this possibility was previously exclusive of the composition with creditors for liquidation purposes (*concordato preventivo liquidatorio*);
- to have a tax settlement (also) in the context of a group restructuring proceedings by jointly submitting a settlement proposal for all group companies in the context of, among others, a group debt restructuring agreement (*accordo di ristrutturazione dei debiti di gruppo*) or a group composition with creditors (*concordato preventivo di gruppo*).

The Firm remains available with regard to any further information and to provide all necessary support in order to assist in the interpretation of the relevant legislation.

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