



Significant Reforms to Italian Insolvency Law

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📖 CORPORATE AND COMMERCIAL, INSOLVENCY AND RESTRUCTURING

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The Code of Corporate Crisis and Insolvency (Legislative Decree no. 14 of 12 January 2019) (the “**Code**”) was published in the Italian Official Gazette on 14 February 2019. The Code will enter into force on 15 August 2020 (18 months after its publication), except for certain articles, principally regarding several amendments to the Italian Civil Code, which will enter into force on 16 March 2019. The main amendments vis-à-vis the previous law are the following:

- **Lexical change: from “bankruptcy” to “judicial liquidation”**
The term “bankruptcy” (*fallimento*) is replaced by the term “judicial liquidation” (*liquidazione giudiziale*). The goal of this lexical change is to reduce the negative repercussions of the term on the business entity which is in financial difficulty.

- **Definition of “status of crisis”**
The Code introduces the new concept of “status of crisis”, which is defined as “an economic and financial difficulty which will probably lead to the insolvency of the debtor”. The definition of “insolvency” remains unchanged.
- **Crisis alert mechanisms and benefits**
For the purposes of pressing the management body of a company to timely deal with a situation of crisis, the Code contains specific alert mechanisms. In particular, the Code provides:
 - a) Alert duties of the supervisory bodies of companies (sole statutory auditor, board of statutory auditors, auditing firms). They have to immediately advise the company management body in case of serious evidence of a crisis situation. Should the



management body remain inactive, the supervisory body has the duty to inform a new public entity for the settlement of corporate crises and insolvency (OCRI – *Organismo di composizione della crisi e dell'insolvenza*). OCRI is a body which will be specifically established at each local Chamber of Commerce in order to manage a specific procedure aimed to settle the status of corporate crises, by reaching an agreement with the creditors of the relevant company within a period not exceeding 6 months.

- b) Alert duties of specific public entity creditors (Italian Tax Office, National Social Security Institute "INPS" and debt collection agencies). They have to immediately advise a debtor should its exposure exceed significant amounts and, in case of inactivity of the debtor (as above under letter a)), they have to advise the OCRI. The failure of the public entity creditors to alert the debtor leads to the downgrading of their claims.

A business entity that takes prompt action in order to settle the crisis will have particular benefits. For instance, in case of tax debts: application only of the legal rate of interest instead of higher rate of interest, reduction of tax sanctions, suspension of enforcement and provisional measures, benefits in relation to assets and personal liability of the business entity, etc.

- **Adoption of a single procedure to ascertain a status of crisis or insolvency**
The procedure to ascertain the status of crisis and of insolvency, both that for a continuation of the business and for liquidating the company, shall be a single procedure, regardless of the nature, dimension and structure of the business entity.
- **Priority given to out-of-court procedures to deal with corporate crises and ensure business**

continuity

The Code gives priority to restructuring agreements and moratorium agreements, in particular through two mechanisms:

- a) Certified Recovery Plans (*Piani attestati di risanamento*). These are plans, to be prepared in minute detail and certified by an independent expert, that a business entity may propose to its creditors, demonstrating its legal and economic feasibility, aimed to restructure debts and ensure the financial recovery of the company;
- b) Debt Restructuring Agreements (*Accordi di ristrutturazione del debito*). Debt Restructuring "Facilitated" Agreements have been introduced. These may be executed with creditors representing at least 30% of the total credits (instead of 60% for the "ordinary" debt restructuring agreement), provided that a moratorium on the payment of those debts not part of the negotiation is not included and a stay on enforcement and provisional measures has not been required.

Debt Restructuring Agreements and Moratorium Agreements (art. 182 *septies* of the Bankruptcy Law), previously executed only with banks and financial intermediaries, can now be executed also with different kinds of creditors, provided that the credits are of the same category and represent at least 75% of the credits of such category.

- **Simplification of procedures of over-indebtedness**
The Code simplifies the procedures reserved to debtors not subject to the "ordinary" procedure of judicial liquidation, in particular: a) Debt Restructuring Plans of the Consumer (*Piano di ristrutturazione dei debiti del consumatore*); b) Minor Creditor Arrangement Procedures (*Concordato minore*); c) Controlled liquidation (*Liquidazione controllata*).



- **Creditors arrangement procedure**
(*Concordato preventivo*)
The Code includes many changes to the creditors arrangement procedure. In particular it enhances the creditors arrangement procedure aimed at the continuation of the activity of the company (*Concordato preventivo in continuità*). The Code, in this regard, provides a moratorium for the payment of secured debts for a maximum period of 2 years (instead of 1 year as provided before). Moreover, the Code reduces the powers of the Court and increases the role of the committee of creditors and of receivers.
- **Simplification of the judicial liquidation procedure**
The “new” procedure, named “judicial liquidation” (*Liquidazione giudiziale*), is inspired by principles of speed and reduction of costs. A special register of receivers has been introduced. The procedure to identify assets is simplified. The mechanism to ascertain the liabilities is speeded up by the electronic filing of the application of creditors and thirds parties. No relevant amendments to the claw back actions and pending agreements has been made.
- **Group insolvency**
The Code, at long last, introduces a definition of “group of companies”, based on the concept of direction and coordination already regulated by the Italian Civil Code.
The Code provides the possibility for groups of companies to file before a Court a single application for the approval of a sole debt restructuring agreement or for admission to a creditors arrangement. In any case, such option shall not affect the separate status of the assets and liabilities of each company and with regard to the creditors arrangement procedure does not affect the

simultaneous and separate vote of the creditors of each company of the group.

Moreover, the Code provides for the postponement of the credits of the company carrying out direction and coordination activity vis-à-vis the companies subject to such activity or credits of the latter towards the first based on financing agreement executed after the application for the admission to the judicial liquidation or during the previous year.

- **Amendments to the Italian Civil Code**

The main amendments to the Italian Civil Code are the following:

- a) Increase of liability of the management body of a company, which has a specific duty to structure the company in such a way as to avoid the crisis. Therefore, the management body shall set up an administrative and accounting structure appropriate to the size, nature and objects of the company, so that the state of crisis may be confronted before it becomes irreversible;
- b) Increase of liability of the management body in relation to the protection of the company assets;
- c) Introduction of a criterion for compensation of damages derived from the liability of the management body after the occurrence of an event of insolvency;
- d) Extension of cases in which the supervisory body of a company must be appointed.


As anticipated, most of the amendments to the Italian Civil Code will enter into force on 16 March 2019.





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