Italy: Reform of the Bankruptcy Law

The bill drafted by the Rordorf Commission, for the reform of the Italian insolvency system, has been recently approved by the Council of Ministers. With such an approval, the Government has been delegated to issue one or more legislative decrees for the reform of the rules governing business crisis and insolvency.

The new provisions are aimed at completing and enhancing the provisions enforced by Decree 83 of 2015 on "*Urgent measures on bankruptcy, civil procedure and the organization and functioning of the judicial administration*", implementing a systematic and organic reform of the insolvency law as well as pursuing a timely recovery of businesses from the crisis that would, on one hand, limit losses and, on the other, ensure the preservation of corporate values.

The new provisions are based on the principle of safeguarding the values of distressed companies. In fact, suitable alert procedures have been established in order to anticipate the recovery of the business from the crisis through an in-depth analysis of the causes behind the economic and financial difficulties of the company and through supporting the negotiations in view of a final agreement with the creditors.

Such alert procedures must be confidential and extrajudicial. The jurisdiction for alert procedures and crisis composition is deferred to a specific section of the crisis composition bodies.

Furthermore, the draft law provides for the obligation for corporate control and auditors' bodies to communicate the state of crisis to the administrative body, and for qualified entrepreneurs (i.e. Italian Revenue Agency, Social Security Agencies) to report to the entrepreneur or to the administrative control bodies of the company the persistence of non-fulfillments of significant amounts due.

In order to promote the use of the debtor's recourse, a series of incentives have been provided for entrepreneurs that timely make use of the procedure and foster positive outcomes.

The draft law foresees a comprehensive reorganisation of the composition with creditors procedure; among the most relevant novelty, it is worth mentioning the prominence given to the composition with creditors enabling corporate continuity, currently governed by article 186 bis of the Bankruptcy Law.

It has limited, however, the use of liquidation proposals, which are permitted only in cases of external resources contribution which would significantly increase the satisfaction of creditors.

In relation to restructuring agreements, the elimination or the reduction of the 60% threshold of credits employed to reach an agreement with the creditors is suggested. This is aimed at facilitating and encouraging debtors to make use of this solution.

The draft law also suggests the extension of the effects of the agreement or of any moratorium to non-participating creditors if the agreement is reached with creditors representing at least 75% of the credits.

The draft law, moreover, focuses on presenting the new "judicial liquidation" principles suggested by the Rordorf commission, which will replace the current bankruptcy procedure by making it quicker and more flexible in its application, while retaining its key existing elements.

Another aspect worth mentioning is the intent to revise the procedure of over-indebtedness in order to harmonise it with the amendments concerning regulation procedures of insolvency and business crisis.

As of today, it is considered unlikely that the Government will implement the draft law within the current year. However, given the importance and the relevance of the matter, we can presumably expect new developments within the year 2017.

> **THE NEW PROVISIONS ARE BASED ON THE PRINCIPLE OF SAFEGUARDING THE VALUES OF DISTRESSED COMPANIES**

GIORGIO CHERUBINI
Partner, EXPLegal,
Rome & Milan (Italy)

GIOVANNA CANALE
Junior Associate, EXPLegal,
Rome & Milan (Italy)