

Italy: Update on Bankruptcy Law Reform

At the end of a lengthy process ending with the report drawn by the Rodorf Commission in December 2015 and with the draft law presented by the Government to the Chamber of Deputies in March 2016, the enabling law reforming the legal framework for enterprises in distress and insolvency proceedings was approved by Parliament in October 2017; afterwards, on 30 October 2017, the law No. 155 of 19 October 2017 named “Delegation to the Government to reform the corporate crisis and insolvency” was published in the Italian Official Gazette.

The reform was necessary and in some respects marks a sharp discontinuity with the previous regulations, a fact that clearly emerges in the enabling law, although the room left to the Government for implementation does not allow a detailed forecast of the new provisions, in terms of both the corporate governance of distressed enterprises and the relevant proceedings.

According to this law, the Government shall adopt, within twelve months from the date of its entry into force, one or more legislative decrees for the organic reform of the Bankruptcy Law referred to in Royal Decree No. 267 of 16 March 1942.

The new law is of a paramount importance for its consequences on corporate governance and in particular concerning the new duties and liabilities of the management and control bodies in a situation of financial distress. Here there is the need of a more detailed regulation to be implemented by the Government and the leading principle of the reform is to protect the value of distressed companies.

In this respect, the Legislator, enshrining the principles that the Government must follow in



issuing the legislative decrees, has preferred the achievement of a regulatory system aimed at saving the companies rather than their liquidation.

One of the most important changes is the introduction of a non-judicial and confidential “alert and crisis composition procedure”, aimed at stimulating the early disclosure of the crisis and directing a rapid analysis of the causes of the economic and financial situation of the company and facilitate the negotiations between debtor and creditors.

The procedure may be voluntarily activated by the debtor and, in case of non-cooperation of the debtor, there will be a public declaration of crisis; the “alert and crisis composition procedure”, is a set of procedures aimed at preventing the development of a full-blown situation of financial difficulty in enterprises and promptly implementing suitable reorganisation measures, since it is unanimously believed that in order to ensure the success of the restructuring processes for debt-ridden enterprises, they must be launched before the enterprise actually becomes insolvent, i.e. unable to meet its debts as they fall due.

In addition, “liquidation proceedings” will be introduced to replace the current bankruptcy procedure. In this new perspective, the bankruptcy receiver plays a key role and sees a

strengthening of his powers.

There will also be a reduction in the duration and costs of the insolvency proceedings, by empowering the management bodies and restricting deductible costs.

In the general framework of crisis resolution instruments, one should also take into account the principle according to which, with the new regulatory framework, priority will be given to proposals to overcome the crisis, considering the liquidation as an “*extrema ratio*”.

Access to certified rescue plans and debt restructuring agreements will also be encouraged and facilitated.

In fact, the threshold of 60% of the credits, provided for by article 182-bis of the existing Bankruptcy Law, will be deleted as long as the agreement will be able to satisfy fully and promptly the creditors who have not attended the negotiations.

Last but not least, it is also important to mention further changes, which will have, as an objective, the introduction of some innovations aimed at reducing the exploitation of the composition with creditors’ function while the rules regarding the over-indebtedness crises will be subject to modification too. ■



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