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Italy:
Systemic reforms

On 11 October 2017 the Senato della Repubblica approved the final version of a law aimed at systemically reforming Italian insolvency law, which in its fundamentals dates back to 1942. Law no. 155/2017 ('the act') has been published on the Gazzetta Ufficiale on October 30, 2017 , and entered into force on 14 November 2017 (Year 158, No. 254).

This reform is based on the preparatory work of the 'Rordorf Commission', a group of experts appointed by the Ministry of Justice in January 2015 with the task of writing a reform proposal to modernise insolvency statutes. Both the commission and the government have been inspired by the desire to introduce and comply with international best practices set out by the UNCITRAL and the EU (although quite oddly no mention is made to the 2016 Proposal for a EU Directive on Insolvency, Restructuring and Second Chance).

This act does not *materially* change the current legislation. It gives the government the authority (and twelve months) to amend the law by means of one or more law decrees, which have to conform to the guidelines described below. Their enactment will determine a change in the applicable law.

The act promotes rescue over liquidation, and it aims at reducing the duration and cost of judicial insolvency proceedings. It pleads for the introduction of the notion of a 'situation of crisis' alongside with 'insolvency', and for the adoption of a single procedural model applicable to all in-court proceedings irrespective of the nature of the debtor (with the sole exclusion of public entities).

It proposes to replace the term 'failure' with 'liquidation' in order to reduce the stigma associated with insolvency.

> "LAW NO. 155/2017 PROPOSES TO REPLACE THE TERM 'FAILURE' WITH 'LIQUIDATION' IN ORDER TO REDUCE THE STIGMA ASSOCIATED WITH INSOLVENCY"

The act also significantly enhances the powers of the curator in liquidation cases. This represents a sea-change for the Italian tradition, as the country has always preferred to rely on procedures that maximised fairness and transparency (by means of judicial supervision) over maximisation of returns to creditors.

The act recommends the introduction of group proceedings for entities subject to Italian jurisdiction. Should the parties opt for separate proceedings, the act prescribes the implementation of co-ordination practices.

Another hallmark is the introduction of the 'alert and composition procedure', i.e. a non-judicial and confidential procedure carried out under the supervision of the Chamber of Commerce. Such a procedure should help the early emersion of a crisis, as the debtor is assisted by a professional body with the objective to turn around his business and reach an agreement with creditors. The debtor may also apply to the court to obtain some protections, including a stay on executory actions.

Some elements however militate against the preventive use of this procedure. In particular, the alert and composition procedure can be triggered against the debtor's will by some public entities. Furthermore, should the parties not be able to reach an agreement, this circumstance would be publicly advertised by the Chamber of Commerce, thus giving away any benefits that might arise from its confidential nature. Finally, if an insolvency status is ascertained at the end of the failed procedure, the public prosecutor is obliged to file a liquidation petition.

As it appears, the act is by no means perfect. However, it represents a much needed improvement. The next twelve months will tell if the first organic reform of insolvency law since Mussolini's times will get the green light. ■

Latvia:
Restructuring administrators no more: lax requirements disproportionately in favour of creditors' interests?

Following amendments to the Insolvency Law which entered into force on 6 January 2017, restructuring proceedings no longer call for the involvement of insolvency administrators, as the prior concept has been replaced by restructuring supervisors.

Whereas restructuring procedures were so far overseen by certified insolvency administrators who had to satisfy strict requirements in terms of their education and compliance with statutory norms, this oversight shall now be carried out by restructuring supervisors, whereby the requirements are merely that they be natural persons with full legal capacity.

In view of the prevalence of restructuring activities containing an international element, and taking into account freedom of

establishment and freedom to provide services, restructuring supervisors must be able to legally reside and work in Latvia for the duration of the restructuring proceedings. Hence, foreign restructuring experts are also a viable choice for creditors when determining their preferred candidate. One ought to note that foreign restructuring supervisors are obliged to abide by national standards for positions equivalent to that of restructuring supervisors in accordance with the statutory norms of their country of domicile.

In addition, restructuring supervisors must not have been convicted of an intentional crime, must not have had insolvency proceedings launched against them in the last five years, and must not have caused the insolvency of a legal entity. Similarly, within the past five years a proposed insolvency supervisor must not have been dismissed or suspended from public office or released from overseeing restructuring proceedings due to abuse of authority.

The most notable restriction, however, remains the prohibition imposed upon anyone involved in drawing up a restructuring plan, as they are barred from becoming restructuring supervisors in the particular case. Considering that restructuring plans have to be approved by the very supervisor delegated by creditors, it seems at least somewhat questionable whether legislators have achieved their intent to provide for a roughly proportionate equilibrium between the interests of creditors and the interests of debtors.

None-the-less, as for other requirements, restructuring supervisors need not comply with the extensive qualification and education prerequisites traditionally imposed upon insolvency administrators.

Restructuring supervisors are appointed by courts at the suggestion of both secured creditors whose main claims form two thirds of total secured creditors' claims and non-secured creditors whose main claims form half of total unsecured creditors' claims. However, the consent of the debtor is also required. Notwithstanding, the amendments are seen as heavily factoring in creditors' interests, giving them substantial influence over who oversees the restructuring process.

So long as the proposed supervisor complies with the above requirements, the adjudicating court need not assess the candidate, since the majority creditors' vote must be adhered to. However, should things go awry, along with the right to propose candidates, creditors are equally entitled to remove the supervisor at any point, and propose another candidate.

Failure to nominate a supervisor results in the termination of restructuring proceedings along with a prohibition on filing for restructuring over the course of the next four months. Repeated failure to nominate a supervisor leads to insolvency proceedings.

Besides, as opposed to restructuring administrators, restructuring supervisors are remunerated by the majority creditors who approved the restructuring plan, the amount being subject to the creditors' generosity, in turn giving rise to doubts about impartiality.

The amendments have been additionally criticised for failing to cover circumstances where the tax authority has the decisive vote among majority creditors, as it does not participate in the supervisor's remuneration scheme, yet its voting rights remain intact. Consequently, restructuring might become unrealisable due to the tax authority's involvement. ■

RESTRUCTURING SUPERVISORS NEED NOT COMPLY WITH THE EXTENSIVE QUALIFICATION AND EDUCATION PREREQUISITES TRADITIONALLY IMPOSED UPON INSOLVENCY ADMINISTRATORS

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