

INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms—Italy

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Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Italy prompted by the coronavirus (COVID-19) pandemic. Written by Giorgio Corno of Studio Corno Avvocati, member of INSOL Europe.

The Italian government has adopted emergency rules concerning, among others, insolvency proceedings and corporate law: Law Decree 17 March 2020 no 18 (converted into law 24 April 2020 no. 27), and Law Decree 8 April 2020 no. 23 (which will be converted into law 60 days from its publication, which took place on 8th April 2020), which will have a significant impact both on pending and new insolvency proceedings, on enterprises functioning and in business continuity. Specifically:

- all hearings and procedural terms are suspended between 9 March and 11 May 2020. Such suspension has an impact also on terms concerning pending insolvency proceedings, Insolvency Practitioners' reports' filing and the fulfilment of their duties. The heads of each insolvency court established, within their own protocols, rules to deals with urgent matters and motions
- the 'recapitalise-or-liquidate' rule for companies with a deficit calculated at accounting values has been suspended by Decree no. 23 until 31 December 2020. Therefore, for a deficit exceeding the amount of its share capital, the directors' duty to liquidate a company is suspended
- the Italian government postponed the entering into force of the new Code of enterprises' crisis and insolvency (approved by Legislative Decree no 14 of 12 January 2019), from 15 August 2019 to 1 September 2021. Such code was conceived with the main objective of anticipating the crisis of the company, with a view to a stable economic framework. In a situation of exceptional difficulties, such as the one the Italian economy is expected to face due to the coronavirus (COVID-19) crisis, the uncertainties arising from the new Code would have created too many uncertainties

Insolvency reforms

With specific regard to insolvency proceedings, the following amendments have been approved:

Preventive Composition (Concordato Preventivo) and Restructuring Agreements (Accordi di Ristrutturazione) with creditors proceedings

- Preventive Composition and Restructuring Agreements approved by creditors and ratified by the courts: terms for the fulfilment of a plan expiring between 23 February 2020 and 31 December 2021, have been extended by six months
- Preventive Composition and Restructuring Agreements approved by creditors but not yet ratified by the courts as on 23 February 2020: the debtor is entitled to apply to the Court to obtain a time-term to file a new plan or proposal for an agreement to creditors, or the extension of the term of fulfilment of the already approved plan
- time-term to file an application for Preventive Composition or for the ratification of a Restructuring Agreement: the debtor is entitled to apply to the court for the extension of such time-term already granted, if founded on the actual emergency

These rules are aimed at supporting companies where the crisis was already activated prior to the emergency period triggered by coronavirus (COVID-19).

Bankruptcy (Fallimento) proceedings

- all petitions for bankruptcy (or Administrative Winding-Up (Liquidazione Coatta Amministrativa) or Extraordinary Administration (Amministrazione Straordinaria)) filed between 9 March and 30 June 2020—either filed by creditors or by the debtor itself—shall be declared inadmissible. Such exceptional rule was introduced, on the one hand, to avoid subjecting the entrepreneur to the growing pressure of third-party bankruptcy petition and to remove the entrepreneurs themselves from the choice to present the petition, in a context in which insolvency can derive from exogenous and extraordinary factors and with the risk of dispersion of the production assets, without any advantage for creditors since the liquidation would take place in a highly disturbed market
- Public Prosecutors shall be entitled to file for bankruptcy if and when precautionary measures, in case of risk of dissipation of the assets, are requested

Other relevant measures for insolvency and restructuring proceedings

Among other rules contained in the provisions of law mentioned above, the following appear to be relevant as well for insolvency and restructuring proceedings:

- recovery, precautionary and enforcement of tax claims are suspended until 31 May 2020. Therefore, the tax-Recovery Agency cannot proceed with the registration of administrative liens or mortgages. As a result of the suspension, any payment due before 8 March 2020 and any tax bill notified before that date must remain on hold until 31 May 2020
- specific measures have been taken with respect to obligations towards banks and financial intermediaries (Article 56 of the decree-law 17 March 2020, No. 18). Specifically:
 - mortgages and loans with contractual maturity before 30 September 2020 shall be extended, together with the respective ancillary elements (such as collateral) and without any formalities, until 30 September 2020 under the same conditions
 - overdraft facilities cannot be revoked before 30 September 2020
 - for mortgages and other loans repayable in instalments (including those concluded through the issuance of agricultural bills of exchange, payment of instalments or lease instalments falling due before 30 September 2020) payment is suspended until 30 September 2020 and the repayment schedule for the instalments or lease instalments subject to suspension is extended, together with the related ancillary elements and without any formalities

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We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus (COVID-19) crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.