

Italy: COVID-19 and insolvency developments



Italy's national lockdown started on 9 March 2020 with the adoption of several rules aimed at containing the economic and financial impact.

Law Decree of 17 March 2020, no. 18 (“*Cura Italia*”) set the first remedies involving judicial and procedural measures without modifying directly the insolvency law, and providing that, with some exceptions, all hearings fixed between 9 March and 11 May should not be held but postponed accordingly to the Court office schedule. Some aspects of insolvency proceedings were randomly affected, such as the suspension of the 60/120 day-term for filing the restructuring proceedings (“*concordato preventivo*”) or agreements with creditors (“*accordi di ristrutturazione*”).

In addition, the *Decreto liquidità* brought the following measures with the aim of safeguarding the continuity of businesses by several “suspension mechanisms”:

Postponement of entry into force of the insolvency law reform

Article 5 postpones until September 2021 the enforcement of the new bankruptcy regime (“*Codice della crisi e dell’insolvenza d’impresa*”). Some provisions related to corporate governance and organisational structures have already been enforced in 2019.

This delay is due to prevent an early enforcement (originally envisaged by August 2020) of such a reform, that would have led to operational concerns and uncertainty, causing further damages.

Deferment of bankruptcy filings or requests

Coherent with the suspension of the obligation to file for bankruptcy, Article 10 states that petitions for winding-up

proceedings filed in the period between 9 March and 30 June 2020 are inadmissible.

This provision does not apply to voluntary petitions (whereas insolvency was not attributable to pandemic), where the filing is made by a Public Prosecutor who requested the granting of precautionary measures, and in some cases the end of restructuring proceedings. It is provided that in case of a future winding up, the period of suspension will not be considered by:

- Article 10 of the Insolvency Law (IL), (winding up within one year from the Register of Companies cancellation);
- Article 64, 65,67 and 69-bis IL (forfeiture of clawback petitions).

Terms extension for restructuring proceedings and agreements with creditors

Article 9 provides six additional months for all deadlines expiring between 23 February 2020 and 31 December 2021 (also in case of consumers’ over-indebtedness proceedings) for the fulfilment of restructuring plans formed under judicial restructuring proceedings already approved by creditors and courts.

Other provisions refer to the motion in case of restructuring proceedings not yet approved, in order to obtain (due to certain conditions) a new non-extendable term (of maximum 90 days) for filing a new restructuring plan or a new proposal to creditors.

The new terms can also be waived by the debtors who have improved a certified restructuring plan (“*Piano attestato di risanamento*”), as out-of-Court proceedings.

Impact on the Italian Civil Code

Some measures of the “*Decreto liquidità*” influencing company law affected the **Italian Civil Code**. Thus, Article 6 provides

the suspension of rules concerning the cases of reduction of capital pursuant to losses of more than one third and even when it falls below the legal minimum: until 31 December 2020, the directors’ and the shareholders’ meeting not being obliged to compel with the rules set by Articles 2446, 2447, 2482-bis, 2483-ter, 2484 and 2545-duodecies.

Article 7 sets the assumption of business continuity in the 2020 financial statement in the case of positive assessment of being a going concern in the previous financial year (closed before 23 February 2020). The provision recalls Article 106 of Law Decree no. 18/2020, in light of the restrictions enforced for in-person meetings with direct impact on the functioning of companies’ bodies.

Article 8 suspends the subordinations of new financing coming from shareholders set under certain circumstances by Articles 2467 and 2497-quinquies of the Civil Code to the claims of the other creditors of the company.

Strictly related to this issue is the rule provided by Article 26 of the law decree of 19 May 2020 no. 34 (“*Decreto rilancio*”) on the contribution in cash given by investors of specific types of companies, that under certain conditions grants a tax credit to the shareholder (20% of the contribution) and to the company (50% of the losses).

Conclusion

All measures adopted* on the grounds of this particular emergency period are necessary to solve urgent problems, but need a more long-term approach to manage the economic crisis. Therefore, the insolvency scenario shall be further integrated due to the general uncertainty of the length of this pandemic crisis. ■

* As at 8 June 2020.



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