

***Reorganization
proceedings and agreements
under recent Italian insolvency law regulations.***

Academic Group Meeting
13 October 2007

What is the speech about?

Reorganization of
insolvent corporate trade debtors
subject to ordinary insolvency proceedings
according to 2005 – 2007
Italian insolvency law reforms.

Regulations from 1 January 2008

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Recent Italian Insolvency Law Reforms

Aim at **increasing competitiveness** of Italian businesses →

- **Private initiative awarded:**
 - Incentives towards the assumption of entrepreneurial risk
 - Reduction of negative consequences in case of failure
- **Business rescue** encouraged. Business as a whole and as a going concern
- **Role of:**
 - **Creditors:** substantially **increased**
 - **Court** and other public institutions: significantly **reduced**

Reorganization according to new Italian insolvency regulations.

- **Concordato preventivo** (*Preventive creditors' settlement proceedings*)
- **Voluntary restructuring agreements with creditors:**
 - Regulated:
 - *Accordi di ristrutturazione (Restructuring agreements).*
 - *Piani attestati (Certified plans)*
 - Non regulated

Reorganization according to new Italian insolvency regulations (2).

Concordato preventivo: binding for creditors, when:

- approved by 51% of (unsecured) creditors entitled to vote; and
- confirmed by the insolvency court

Voluntary agreements (binding for creditors taking part to them):

- **Accordi di ristrutturazione:** required approval of at least 60% of creditors (secured and/or unsecured)
- **Piani attestati** and other voluntary agreements

Debtors subject to reorganization proceedings

- **Non large**
- **trade debtors**
- **facing a state of crisis (which includes state of insolvency). Cash flow test.**

Proposed Plan. Concordato preventivo

1. Restructuring of payment obligations (time terms, value, interest rate, rank) and / or
2. Satisfaction of creditors' claims by any mean, inclusive of
 - transfer of goods to creditors;
 - debts assumption (*accollo*);
 - extraordinary operations, such as the transfer to creditors (or companies controlled by them) of shares,
 - Issuance of bonds and other financial instruments;
 - debts swap into shares and / or
3. Transfer of the debtor's assets to a third party, inclusive of companies controlled by creditors. Third party may take the insolvent debtor's obligations; and ask for debtor release from obligations.

Proposed Plan (2)

a. Accordi di ristrutturazione:

- Restructuring of payment obligations (as in concordato preventivo)
- provision of guarantees; and / or
- new loans; etc)

b. Piani attestati: debtor preserved, through:

- Reduction of debtor's liabilities; and
- rebalancing of its financial position

Proposed Plan (3). Publicity

a. Concordato preventivo:

- to be filed at court
- Available from any creditor

b. Accordi di ristrutturazione: to be

- Filed at court
- Published in the company's register

c. Piani attestati: none

Proposed Payment.

Concordato preventivo

Made to (a) creditors or (b) classes of creditors (when formed):

a. **Pre-preferential:** entire amount due

b. **Secured:**

(i) Entire amount due

(ii) On a percentage basis

- According to grounds for priority

- Not lower than the estimated amount, based on the goods / rights on which the security lies, as estimated by an expert with specific requirements

c. **Unsecured:** on a percentage basis

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Proposed payment (2)

**Restructuring agreements, certified plans, other
voluntary restructuring agreements:
according to agreements' content**

Expert report

Concordato preventivo: assess

- plan's feasibility; and
- data's trustfulness

Accordi di ristrutturazione: assess agreement's:

- Feasibility; and
- capability to provide full satisfaction to the creditors not taking part to the agreement

Certified plans: assess plan's reasonableness

Uniform requirements for appointment

Proposal effects

Automatic stay or suspension of enforcement proceedings against the debtor's assets:

- **concordato preventivo:** from application until the confirmation order issued by the insolvency court becomes final
- **restructuring agreements:** sixty days from proposal publication in the company house register (freezing proceedings included)
- **certified plans and other voluntary agreements:** none

Proposal effects (2)

Debtor manages the company and disposes of assets:

- a. concordato preventivo:
 - under court and appointed commissioner supervision
 - until court confirmation
- b. restructuring agreements and attested plans
 - no supervision

Priority granted to debts incurred pending concordato preventivo proceeding

The proceedings. Court role

A. Concordato preventivo:

- control over:
 - *proposal + plan + other conditions* (following application and prior to creditors' vote)
 - *debtor's conduct* (pending the proceedings), with judicial commissioner's help
- confirmation of the proposal (following creditors' vote).
Cramdown

Court may declare the debtor insolvent, upon application of any creditor or the public prosecutor

The proceedings. Court role (2)

B. Restructuring plans. Insolvency court:

- a. Accepts application → proposed agreement confirmed
- b. Rejects application → agreement not confirmed

Court may declare the debtor insolvent, upon application of any creditor or the public prosecutor

Creditors' role. Concordato preventivo

- Entitled to vote:
 - *Unsecured creditors*
 - *Secured creditors*, only for the part of the claim (i) affected by the proposal; or (ii) waived
- Required majority
 - in excess of fifty percent of credits admitted to vote
 - When classes formed, required majority:
 - of classes;
 - in excess of fifty percent of credits admitted to vote
- Dissenting creditors: may oppose to confirmation or appeal against it

Creditors' role (2)

- Restructuring agreements:
 - Require approval of creditors representing at least 60% by value of existing claims (both secured and unsecured). Those creditors bound as soon as the agreements are confirmed by the court
 - Other creditors: need to be entirely satisfied
 - May be challenged within thirty days from publication in the company house register by any creditor or any other interested party
- Attested plans
 - Binding for any creditor who approved them

Voidable transactions

Transactions, payments and / or guarantees over debtor's assets, carried out or granted prior to liquidation proceedings:

- a. **concordato preventivo** (after confirmation): unchallengeable
- b. **restructuring plan**: transactions, payments and/or guarantees to creditors who approved the plan, after plan's confirmation: unchallengeable
- c. **certified plans**: only transactions, payments and/or guarantees to creditors, when conditions met: unchallengeable

... is this enough for advising
insolvent debtors
to migrate to Italy?

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Thank you

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