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Italy: Urgent measures to prevent company crisis and postponement of insolvency



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As occurred in all the world, the spread of the COVID-19 virus has had a strong negative impact on economic and commercial activities, causing serious company defaults and the consequent bankruptcy of many companies.

In Italy, due to an increase of the number of companies in financial difficulties or insolvent, and aware of the need to provide new and effective tools to prevent and deal with the crisis situation, the Legislator has been actively researching and designing the aforementioned tools.

Thus, on 24 August 2021, Law Decree no. 118 has introduced urgent measures concerning the business crisis and corporate recovery which have been published in the Official Gazette (*"Gazzetta Ufficiale"*).

The Decree prescribes four types of intervention and in particular:

- the postponement until 16 May 2022 of the entry into force of the Company Crisis and Insolvency Code (Legislative Decree no. 14/2019);
- the Amendment of the Bankruptcy Law and, specifically, of the provisions concerning the procedures of arrangement with creditors and the restructuring agreements. These changes

have been inserted with the aim of encouraging a positive exit from the crisis, trying to avoid the bankruptcy of the companies;

- the postponement of entry into force of the alert measures foreseen by the Legislative Decree n° 14/2019 until 31 December 2023. This postponement is aimed at testing the effectiveness of the negotiated settlement and at reviewing the alert mechanisms contained in the Company Crisis and Insolvency Code; and
- undoubtedly the most significant intervention is the introduction of the *"Negotiated settlement of the crisis"*, which represents a new tool to help companies in difficulty to recover.

The main characteristics of this new tool are:

- it can be used by both commercial and agricultural entrepreneurs who find themselves in conditions of financial imbalance which makes a future crisis or insolvency probable;
- it is an exclusively voluntary composition process characterized by absolute confidentiality;
- the access is allowed through an online platform accessible

to entrepreneurs registered in the business register through the institutional website of each chamber of commerce, industry, crafts and agriculture. The contents of the platform, the indications for the preparation of the recovery plan and the methods of the practical test – designed to verify the feasibility of the recovery operation – will be defined by the Decree of the Ministry of Justice to be adopted within thirty days from the date of entry into force of the Decree n° 118/2021; and

- the entrepreneur who decides to use this tool will be supported by an independent expert with specific skills, as a third party, who will have the task to facilitate negotiations between the entrepreneur, the creditors and any other interested parties, in order to identify solutions for overcoming the crisis, e.g., the sale of the company (as a going concern) or its branches. The expert will be chosen from a list of experts trained by the territorially competent chamber of commerce, industry, crafts and agriculture. The appointment of the expert is made by a Commission that remains in charge for two years. ■



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