



In this section of *eurofenix* we bring you short updates from our members including insolvency measures in response to the COVID-19 crisis in their jurisdictions. To contribute to a future edition, please contact: [paulnewson@insol-europe.org](mailto:paulnewson@insol-europe.org)

## Stopping company crisis: The Italian procedure for negotiated settlement



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**As has occurred, all over the world, the spread of the COVID-19 virus is having a strong negative impact on economic and commercial activities, causing serious corporate defaults and the consequent bankruptcy of many companies. In Italy, as anticipated in an article published in an earlier issue of Eurofenix,<sup>1</sup> the legislator has acted by researching and promoting the implementation of instruments to prevent and deal with companies in crisis.**

More specifically, on 24 August 2021, Law Decree no. 118/2021 was published in the Official Gazette (Gazzetta Ufficiale) and then converted into Law no. 147 of 21 October 2021; it introduces urgent measures in the matter of business crisis and corporate restructuring. The new provisions, together with other rules, set out the creation of a procedure called “negotiated settlement of the crisis”. This is a new procedure that undoubtedly represents the most significant action in providing a new tool to support companies in difficulties. It is firmly aimed at their recovery and presents the following characteristics.

### Recipients

According to Article 2 of Law Decree no. 118/2021, all commercial entrepreneurs, as well as agricultural entrepreneurs - normally entities who cannot be adjudicated bankrupt, can use this procedure. In order to promote its use, Law Decree no. 118/2021 provides a series of protective incentive measures for an entrepreneur who decides to make use of this procedure and who may request, at the time he submits the application or later during the procedure, the appointment of a so-called expert.

### Appointment of the expert

One of the main peculiarities is the appointment of the “expert”, a new professional to facilitate negotiations between the entrepreneur, the creditors and any other interested parties in order to overcome the condition of equity- or economic-financial imbalance. By virtue of his role, the expert must have in-depth skills in the area of business crisis and corporate restructuring. In fact, for this purpose, in addition to the already required registration in the professional registers, the expert must also have previous

experience of at least five years in the field of corporate restructuring and business crisis.

### Reasonable pursuit of recovery

An essential requirement for access to the procedure is the actual perspective of recovery, which is verified by carrying out a test involving a preliminary assessment of the complexity of recovery through the relationship between the entity to the debt to be restructured and the cashflows that could be committed annually to servicing the debt. This test is also aimed at making clear the degree of difficulty that the entrepreneur will have to meet and how much the recovery will depend on the ability to adopt discontinuity initiatives and their intensity. ■

#### Footnote:

<sup>1</sup> ‘Country Report: Italy’ *Eurofenix* (Autumn 2021 Issue), 36.