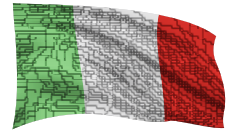


# Recent amendments to the Italian restructuring system



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**Legislative Decree No. 136/2024, published in the Official Gazette on 26 September 2024, also known as the “Third Corrective Decree,” introduces significant amendments to the Italian Business Crisis and Insolvency Code. The decree is part of Italy’s National Recovery and Resilience Plan (PNRR) and aims to enhance the efficiency of the reform of the Italian restructuring system.**

## Regulatory update

The Business Crisis and Insolvency Code, established by Legislative Decree No. 14 of 12 January 2019, replaced the Bankruptcy Law (Royal Decree No. 267/1942). Initially scheduled to take effect as of 15 August 2020, its implementation was delayed due to the COVID-19 pandemic and the need to incorporate the principles of the EU Directive on Restructuring and Insolvency.

The reform also aligns with the EU’s 2014/135 Recommendation, Regulation EU 2015/848 on cross-border insolvency and the UNCITRAL Model Law on Cross-border Insolvency, facilitating the mutual recognition of judicial decisions in cross-border cases.

Legislative Decree No. 136/2024 comprises 57 articles divided into two parts:

- **Part I:** Amendments to the Business Crisis and Insolvency Code (Articles 1–51);
- **Part II:** Coordination, repeals, transitional, and financial provisions (Articles 52–57).

## Relevance for businesses

One of the most significant aspects of the decree is its emphasis on crisis prevention. The legislator seeks to enhance early warning mechanisms through a more proactive crisis management system. This provides consultants, control bodies and boards of statutory auditors with practical tools to identify risks and maintain business continuity before a financial collapse occurs.

This approach reinforces the role of negotiated settlements to address financial imbalances, encouraging businesses to resolve crises early. Control

bodies, including auditors and boards of statutory auditors, now bear increased responsibilities, as they must report actual crises or insolvencies, not merely warning signals, thus promoting accountability.

The legislative framework prioritizes business functionality and market presence over merely safeguarding the entrepreneur’s assets for creditor satisfaction. This represents a shift from the traditional view of insolvency as a managerial failure requiring state oversight, moving towards a model that values employment retention and operational continuity over creditor-debtor disputes.

## Role of financial intermediaries

The decree introduces specific duties for financial intermediaries during the negotiated settlement process. Banks must maintain existing credit facilities and cannot suspend or revoke them solely because the procedure has commenced. Changes to credit terms are allowed only if justified by the restructuring plan and regulatory requirements. Additionally, any decisions by financial institutions must be fully documented, ensuring transparency.

Crucially, the continuation of credit relationships does not expose financial intermediaries to liability for abusive lending if the restructuring efforts ultimately fail. This provision protects banks and facilitates cooperation between financial institutions and distressed businesses.

## Tax settlements

A major innovation of the Third Corrective Decree is the extension of tax settlements, previously available in other restructuring tools, to negotiated settlements. This mechanism allows businesses facing financial distress or insolvency to request the appointment of an expert from the Chamber of Commerce to mediate agreements with creditors, including public entities.

The tax settlement now encompasses local taxes and social security contributions. It must offer a better outcome than judicial liquidation, with its feasibility verified by

an independent professional and its data completeness certified by an auditor.

## Fiscal cram down

The decree introduces stricter criteria for fiscal *cram downs*, a contentious area balancing public creditor interests with business recovery needs. For restructuring agreements, the minimum satisfaction threshold for public creditors has been raised from 30% of debts (including penalties and interest) to 50%, excluding penalties and interest. This ensures a higher recovery rate for public entities while maintaining support for viable restructuring plans.

## Negotiated settlement

The decree refines the framework for negotiated settlements, emphasizing the importance of early intervention and professional support. Businesses can activate this out-of-court procedure through the Chamber of Commerce, appointing an expert to assist in negotiations with creditors and stakeholders. The expert, a seasoned professional in business crisis management, assesses restructuring prospects, identifies viable solutions and drafts a report uploaded to a national platform for transparency.

During the procedure, businesses benefit from tax incentives and protective measures, including a moratorium on creditor action and protection against insolvency filings. For business groups, specific provisions ensure unified proceedings, while smaller enterprises are afforded simplified processes.

## Summary

The Third Corrective Decree represents a significant step in enhancing Italy’s restructuring framework, prioritizing prevention and stakeholder cooperation. While it introduces valuable tools for businesses and intermediaries, its effectiveness will ultimately depend on the consistent application of its provisions and the active engagement of all stakeholders in fostering a culture of early crisis composition. ■



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