

First steps in Bankruptcy Law reform process

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Introduction

Following approval by the Chamber of Deputies on February 1 2017 and the Senate on October 11 2017, Law 155 (the delegation law) was finally published in the *Official Gazette* on October 30 2017 and came into force on November 14 2017.

Law 155 incorporates, among other things, the results of the Rordorf Commission's work (for further details please see "Draft law to reform insolvency procedures: group-wide pre-bankruptcy agreements") and establishes the Delegation to the Government for the Reform of Corporate Crisis and Insolvency Law, which means that the government must enact one or more legislative decrees in order to incorporate Law 155's principles and guidelines into the Bankruptcy Law (Royal Decree 267 of March 16 1942) within 12 months.

Law 155 comprises three chapters and 16 articles and represents an ideal opportunity to modernise Italian insolvency proceedings through a comprehensive set of guiding principles and criteria to be applied to rationalise the associated judicial proceedings.

The legislature's recent initiative can be considered a continuation of the Bankruptcy Law reform which started in 2006 and was continued in 2012.

The key points of the latest reform are:

- the development of mechanisms to recognise and resolve a debtor's business crisis before it becomes irreversible;
- the development of extrajudicial instruments to resolve such a crisis;
- the adoption of new mechanisms to protect a company's assets during negotiations with creditors; and
- the simplification of judicial proceedings, which will be faster and prioritise proceedings that allow business continuity.

Further, as part of the effort to build more efficient, simple and modern insolvency proceedings, Law 155 proposes to replace the word *fallimento* (ie, bankruptcy), which has a negative and undesirable meaning, with the expression *liquidazione giudiziale* (ie, judicial liquidation) in order to state clearly that an entrepreneur who has been declared

bankrupt will no longer be considered a failed businessperson, but rather an entrepreneur who experienced an economic misfortune and will be able to start a new business in future.

The government has also introduced a definition of the new concept of 'business crisis', intended to mean the likelihood of future insolvency.

The legislature has provided an explanation of the general principles of the law.

Group insolvency

Article 3 of Law 155 concerns a unified insolvency proceeding for a group of companies. In this regard, rules must be implemented to:

- enable the determination of local jurisdiction;
- provide a means to exchange information between relevant bodies in cases of pending proceedings among different judicial authorities; and
- ensure the possibility of a unified application for judicial proceedings relating to all consolidated debts.

The law also recommends maintaining the autonomy of assets and liabilities of an individual group of companies.

Warning proceedings

Under Article 4 of Law 155, the government will implement new judicial and restricted proceedings which, through the analysis of company data, will help to identify when a company is in crisis and overcome this crisis by promoting negotiations with creditors.

In order to maximise companies' use of these proceedings, Law 155 requires the government to introduce advantages relating to assets and liabilities. In order to ensure the confidential nature of proceedings, a settlement cannot be filed with the court, but rather must be filed with specific offices created by chambers of commerce.

Debt restructuring agreements and deeds of arrangement

Under Articles 5 and 6 of the delegated legislation, the effects of the Debt Restructuring Agreement pursuant to Article 182*bis* of the Bankruptcy Law will also be extended to creditors that are not parties to the agreement, on the condition that they agree to hold at least 75% of the total credits.

A deed of arrangement will be limited to cases of business continuity. The simple liquidation of a company will be allowed only in cases which will put creditors in a "far better position" and at least 20% of non-preferential creditors vote in favour of such a liquidation. This change should improve the motivation for business owners to keep their business active.

Judicial liquidation

Article 7 of Law 155 provides for the introduction of new mechanisms (eg, electronic consultation with creditors and the simplification of the process of establishing claims) in order to simplify and expedite the judicial liquidation process faster.

Further, the law amends the provisions regarding pending transactions in the case of insolvency. The right to deduct credit is restricted to claims which come into existence during insolvency proceedings. All contracts of a personal nature will be terminated unless it is agreed that they should be continued with the consent of the parties in question.

Bankruptcy discharge

Under Article 8 of Law 155, the bankruptcy discharge (ie, the possibility at the end of the proceedings for the debtor to discharge residual debt if it cooperated with the authorities) has been extended (especially in the case of small amounts of residual debt).

Insolvency of small businesses

Under Article 9 of Law 155, insolvency proceedings concerning small businesses and customers have been refined through:

- the extension of over-indebtedness proceedings to businesses with unlimited liability (which were previously excluded); and
- the introduction of a new regulation criteria to coordinate consumer insolvency proceedings which affect different members of the same family.

Comment

Through Law 155 the legislature aims to restructure the Italian insolvency and bankruptcy system. The success of the changes introduced will depend on how the government implements the guidelines indicated therein.

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