

THE “COVID-19” EMERGENCY AND ITALIAN BANKRUPTCY LAW

Sections 5,9 and 10 of the Law Decree No. 23 of 8 April 2020 (effective 9 April) introduced some significant changes in Italian bankruptcy law, with the aim of supporting as much as possible Italian companies in the management of the current “Covid-19” emergency.

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I. THE PROVISIONS

(a) Deferral of the entry into force of the Italian Crisis and Insolvency Code as of 1 September 2021 instead of 15 August 2020, as originally planned. The current rules of Italian bankruptcy law will therefore continue to apply until that date.

(b) All creditors’ claims for the declaration of bankruptcy of a company that have already been filed or will be filed in the period from 9 March to 30 June 2020 (unless the claim has been filed by the Public Prosecutor) will be automatically rejected by the competent Bankruptcy Court.

(c) Companies will be entitled to obtain a six-month extension of the terms of compliance with Debt Restructuring Agreements.

II. FIRST ADVICE FOR COMPANIES

1. It is certainly positive that all the rules of the Italian Crisis and Insolvency Code (provided by the Italian Legislative Decree No. 14 of 2019) shall come into force on 1 September 2021 and not on 15 August as originally planned.

2. These provisions were designed for ordinary market conditions and are certainly not suitable for the current emergency environment, which is causing serious economic losses for Italian companies, due to the lockdown of their business activities.

3. The application of the new alert systems -- able at identifying the crisis indicators -- would in fact have prevented the vast majority of Italian companies from continuing to carry out their activities if we consider that, in this emerging environment, not many companies would be able to give evidence of the “sustainability of debts” for at least the next six months and the “business continuity prospects” for the current financial year, as envisaged by the introduction of the Code.

4. More problematic (at least for creditors) is the automatic rejection of all

creditors' claims aimed at declaring a given company bankrupt from 9 March to 30 June 2020.

5. This measure appears to be excessively broad, including situations that may not be “worthy” of such legislative protection. Under the current bankruptcy rules, it is very likely that the insolvency status of the relevant company was determined by pre-emergency causes from “Covid-19” (consider, for example, claims filed by a creditor on 9 March or against a company operating in the food sector, that has not been restricted due to the “Covid-19” emergency).

6. More positive considerations, on the other hand, deserve the new provisions on Debt Restructuring Agreements, as they are functional to the management of business crises in the context of procedures already directed towards a solution agreed with the creditors, both in cases where such Agreements have already been approved by the relevant Court and in the pre-approval phase.

7. In relation to Agreements already approved by a Court, the debtor will receive the benefit of a six-month extension for the fulfillment of the obligations established by the relevant Agreement expiring in the period between 23 February 2020 and 31 December 2021. Thus this emergency period shall not be taken into account for the purposes of the default.

8. If, on the other hand, the Court's approval of the Agreement has not yet been granted, the debtor may:

(i) submit an application for requiring up to ninety days for the submission of a new Debt Restructuring Agreement to the creditors (unless the previous proposal has already been rejected by the creditors), so as to take into account the economic factors that occurred during the “Covid-19” emergency;

And

(ii) require a six-month extension of the terms for fulfilling the obligations provided for in the relevant Restructuring Agreement.

9. These measures appear better suited to help debtors in need cope with serious negative economic consequences from the “Covid-19” outbreak without, at the same time, penalizing the creditors too much.

Milan, 16 April 2020