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## Italy: Rescue procedures in insolvency

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Italy

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 18 June, 2021

Native name:

Regio Decreto 16 marzo 1942, n. 267, Disciplina del fallimento, del concordato preventivo, dell'amministrazione controllata e della liquidazione coatta amministrativa; Decreto legislativo 9 gennaio 2006, n. 5 Riforma organica della disciplina delle procedure concorsuali; Decreto legge 27 giugno 2015, n. 83, coordinato con la legge di conversione 6 agosto 2015, n. 132, 'Misure urgenti in materia fallimentare, civile e processuale civile e di organizzazione e funzionamento dell'amministrazione giudiziaria'; Decreto legislativo del 12 gennaio 2019, n. 14, Codice della crisi d'impresa e dell'insolvenza in attuazione della legge 19 ottobre 2017, n. 155. Decreto legislativo 12 Gennaio 2019, n. 14

English name:

Royal Decree of 16 March 1942, no. 267, Discipline of bankruptcy and of insolvency proceedings (Bankruptcy law); Legislative decree of 9 January 2006, no. 5, Comprehensive reform of insolvency proceedings; Decree Law of 27 June 2015, no. 83, as converted into Law 6 August 2015 no. 132, Urgent measures concerning bankruptcy, the civil code, the civil procedure code and the organisation and functioning of judicial administration. Reform of the rules on corporate crisis and insolvency procedures; Law 19/10/2017 n. 155; Legislative decree 12 January 2019, n. 14, Code of business crisis and insolvency in implementation of the law of 19 October 2017, n. 155. Legislative decree 12 January 2019, n. 14

### Article

Bankruptcy law, articles 1, 160-186 bis; Legislative Decree no. 5/2006, articles 141-146; Decree Law no. 83/2015, articles 1-4, 8; Law 19/10/2017 n. 155. article 13

### Description

In September 2017, a new law covering bankruptcy and insolvency procedures was approved and put into force by Legislative decree 12 January 2019, n. 14.

The new law lists three indicators which should alert the company about an upcoming insolvency risk and prompt it to take action:

- lateness in paying workers' wages;
- lateness in paying suppliers;
- budget indexes not in line with the ones established by the national council of business consultants (Consiglio nazionale dei dottori commercialisti).

These alerts should prompt the company to take action and undergo negotiations with its creditors to enable the company to go back to normal. Only if these negotiations fail or if there is a clear evidence that the company is not willing to negotiate, the matter can be taken to court after 60 days. In this case the statutory auditors need to inform OCRI (Observatory for companies rescue).

A second system of alerts is external:

- Taxes: the revenue Agency is obliged to report those cases in which the VAT liability is equal to at least 30% of the turnover for the period in which the last liquidation refers
- Contribution and social security: National Institute of Pensions (INPS) has to report when there is failure to pay, for over 6 months, social security contributions amounting to more than half of those due in the previous year, and above the threshold of €50,000

- Credits: when the company has overdue credits exceeding the time limit of 90 days and exceeding the amount of € 500,000 for sole traders and €1 million for companies, an agent is nominated to rescue those credits

The entrepreneur needs to present a plan containing:

- causes of the crisis;
- strategies and actions planned to achieve a good financial standing again;
- list of creditors and amount of credits being renegotiated;
- new funding streams;
- timeline for the new plan.

An auditor can be called upon to certify that company's financial information is correct and that the plan is feasible from an economic and legal point of view.

An agreement must be reached with creditors representing at least 60% of the credits being renegotiated.

There is a possibility to agree with creditors which represent only 30% of the credits but the plan must not envisage:

- a suspension of other creditors' payments;
- the entrepreneur must not request protection of assets.

Changes to a plan can be made, but agreement from creditors must be reached.

Both the amended plan and the attestation must be published in the business register (article 58) and the debtor is charged by giving notice to creditors who, in turn, can lodge an opposition within the term of 30 days.

This set of operations is excluded from penal law consequences (except in cases where there is malevolent intent) and tends to favour solutions which can ensure business continuity as well as debts repayment.

## Comments

The law which entered into force in January 2019 eases the access to a pre-bankruptcy agreement, strengthens powers of the trustees, and promotes rescue proposals that address the crisis by ensuring business continuity.

With the enactment of the Law of 8 March 2019, n. 20, a new delegation has been assigned to the government for the promulgation of integrative and corrective dispositions of the reform of the discipline of the business crisis and insolvency. The reform contained in Legislative Decree of 12 January 2019, n. 14, could therefore undergo modifications or additions in the near future.

### Cost covered by

Not applicable

### Involved actors other than national government

Other

### Involvement others

Creditors, auditors, Council of business consultants (Consiglio nazionale dei dottori commercialisti), OCRI (Observatory for companies rescue)

### Thresholds

No, applicable in all circumstances

### Sources

- 📖 [Royal Decree no. 267/1942](#)
- 📖 [Legislative Decree no. 5/2006](#)
- 📖 [Decree Law no. 83/2015](#)
- 📖 [Law 19 October 2017, n. 155](#)
- 📖 [Legislative Decree 12 January 2019, n. 14](#)
- 📖 Sandulli, M. and D'Attorre, G. (2016), *Manuale delle procedure concorsuali*, Giappichelli Editore, Torino

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