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Proposed new rules to facilitate debt restructuring of Italian companies

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Authors: **Iacopo Canino**, **Nicholas Lasagna**

On June 27, 2015, the Italian government approved Law Decree No. 83/2015 (the "**Decree**") with the aim of further improving the competitiveness of Italian bankruptcy legislation and facilitating debt restructuring of Italian companies.

The Decree entered into force on June 27, 2015 and needs to be converted into law by the Italian Parliament within 60 days of such date.

New rules on restructuring procedures

- Facilitated access to interim financing
- New debt restructuring agreement (*accordi di ristrutturazione dei debiti*): "cram-down" of dissenting financial creditors
- Pre-bankruptcy agreement (*concordato preventivo*):
  - Competing plans now permitted
  - Competitive bids now permitted

Facilitated access to interim financing

The Decree introduced new provisions aimed at facilitating access to interim finance pending the finalization of pre-bankruptcy agreements (*concordato preventivo*) and debt restructuring agreements (*accordi di ristrutturazione*). The new provisions are aimed at preserving business continuity and enhancing the prospects of successfully completing company restructurings in Italy.

Debtors are now permitted to obtain urgent interim finance which is necessary for their business needs without having to deliver an independent expert certification (*attestazione del professionista*) required under prior rules.

The debtor must, amongst other things, declare that interim finance is urgently needed and the inability to access such finance would cause imminent and irreparable harm. The Court must decide on the request within 10 days of the filing of the application after having consulted the judicial commissioner and, if necessary, the principal creditors.

Interim financing to the extent authorized by the Court would continue to rank senior (*prededucibili*) in case of subsequent bankruptcy of the debtor as under the prior regime.

New debt restructuring agreement (*accordo di ristrutturazione dei debiti*): "cram-down" of dissenting creditors financial creditors

A new type of debt restructuring agreement (*accordo di ristrutturazione dei debiti*) has been introduced with the aim of overcoming hold-out strategies of creditors not willing to participate in the restructuring.

This type of agreement would be available to debtors whose financial indebtedness is at least 50% of total indebtedness.

If the above condition is met, then to the extent a debt restructuring agreement is entered into with financial creditors representing at least 75% of the aggregate financial claims of a debtor, the dissenting financial creditors would also be bound by the agreement, subject to certain conditions being met (including that treatment of dissenting creditors is no worse than under any other available route). The rights of non-financial creditors would remain unaffected.

Similarly, a standstill agreement (*accordo di moratoria*) entered into between a debtor and financial creditors representing 75% of that debtor's aggregate financial indebtedness would also bind the other non-participating financial creditors, subject to certain conditions being met.

Under the existing rules, a debtor could enter into a debt restructuring agreement (*accordo di ristrutturazione dei debiti*) with creditors representing at least 60% of the total outstanding claims but the effects of the agreement would only be binding to the parties thereto. The only procedure capable of "forcing" non-consenting creditor was therefore the pre-bankruptcy agreement (*concordato preventivo*). The new rules are expected to facilitate restructuring of companies whose indebtedness is largely of a financial nature without the need to access the more extensive and burdensome pre-bankruptcy agreement procedure and to affect the generality of its creditors.

Pre-bankruptcy agreement (*concordato preventivo*)

Competing plans now permitted

Subject to certain conditions being met, it is now possible for creditors to file a restructuring plan which is alternative to the debtor's plan in pre-bankruptcy agreement proceedings. Under the prior rules, only the debtor could propose a plan to its creditors, who were only entitled to vote in favor or against it.

Creditors holding at least 10% of the aggregate claims against a debtor may present an alternative plan if the proposal of that debtor provides for a recovery of less than 40% of the unsecured claims (*crediti chirografari*).

To the extent the alternative plan is approved by the creditors and ratified (*omologato*), the Court may assign special powers to the judicial commissioner to implement the plan if the debtor does not cooperate, including by taking all corporate actions which are necessary to approve share capital increases.

It is expected that this measure will increase the competitiveness of pre-bankruptcy proceedings with the aim of maximizing recovery for creditors.

Competing bid now permitted

In the event that the plan includes an offer for the sale of the debtor or of a going concern of the debtor to an identified third party, the judicial commissioner may request to the Court the opening of a competitive bidding process on the basis that this is in the best interest of the creditors.

Also in this case, it is expected that the measure will increase competitiveness of pre-bankruptcy agreement proceedings with the aim of maximizing recovery for the creditors.

Deductibility of losses on loans

The Decree allows credit and financial institutions to fully deduct write-offs and losses on claims towards customers in the year in which they are assessed. The measure is effective from the financial year ending on December 31, 2015.

For the first applicable period only, i.e. the tax period ending on December 31, 2015, such deductibility is reduced to up to the 75 percent of the amount of the relevant write-offs and losses, while the remaining 25% may be deducted in the following years. Rules are also established for the deductibility of write-offs and losses recorded in the 2014 financial statements and not deducted yet.

These new provisions should encourage credit and financial institutions to relieve non-performing loans in order to increase the capital buffer for the granting of new credit lines.

In addition, the Decree does not allow turning into tax credits the DTA (*attività per imposte anticipate*) related to goodwill and other intangible assets.

White & Case LLP
Piazza Diaz 1
Milan 20123
Italy

T +39 02 00688 300