

Legal Report

Preliminary observations on Law Decree dated
8 April 2020, no. 23
Insolvency Law provisions



Current as of 9 April 2020



Legal Report: Law Decree no. 23/2020 – Insolvency Law provisions

Introduction

On 8 April 2020, the Italian Council of Ministers approved Law Decree no. 23, published in the Official Gazette (General Series no. 94, Extraordinary Edition of April 8, 2020), containing “*Urgent measures related to access to credit and tax obligations for businesses, special powers in strategic industry sectors, as well as healthcare and employment interventions, prorogation of administrative and procedural deadlines*”.

Law Decree no. 23/2020 (the so-called ‘*Decreto Liquidità*’) (**Decree**) includes a number of provisions that significantly affect the application of Insolvency Law, for the period of Covid-19 emergency, which are summarised below.

Our Restructuring Team is at your disposal for any clarification you may need.

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1. The Italian Code of Corporate Crisis and Insolvency (Art. 5)

The entry into force of the new Italian Code of Corporate Crisis and Insolvency ("CCI"), originally scheduled for 15 August 2020, has been postponed until 1 September 2021.

The reason for the postponement is clearly based on the one hand by the need to ensure, during the period of the Covid-19 emergency, certainty in the application of an area of strategic law for business continuity. The entry into force of such a wide-ranging reform will inevitably lead to operational concerns, which would provoke serious uncertainty and damage in this current period of generic crisis.

Among its main features, this far-reaching reform on insolvency law includes the introduction of early warning measures, aimed at highlighting immediate evidence of the crisis, through the assignment of reporting and intervention obligations to the supervisory bodies and the so-called qualified creditors (Italian Revenue Agency – *Agenzia delle Entrate* and the Italian social security organization - *INPS*). The introduction of such measures in a period of worldwide crisis would not be effective in selecting companies in need of extraordinary crisis management tools and would, on the contrary, risk adversely affecting the prospects of business continuity.

2. Extension of the deadlines for the fulfilment of arrangement with creditors and debt restructuring agreements proceedings (Art. 9, paragraph 1)

The deadlines for completing the arrangement with creditors procedure (*concordato preventivo*) and debt restructuring agreements (*accordi di ristrutturazione del debito*) proceedings **expiring between 23 February 2020 and 31 December 2021 are extended by 6 months.**

3. Amendments to plans and proposals during the approvals stage (Art. 9, paragraphs 2 and 3)

By way of derogation from the ordinary legal framework, according to which plans and proposals for arrangements with creditors (*concordato preventivo*) may only be amended in the phase preceding the creditors' vote, provision is made for the **possibility to amend plans and proposals even in proceedings in**

in which the voting phase has already been successfully completed (with the necessary majorities having been obtained).

Two situations are regulated.

a) the debtor's need to substantially **amend the restructuring plan and the proposal to creditors.**

In this case, in proceedings for the approval of an **arrangement with creditors (*concordato preventivo*) and debt restructuring agreements (*accordi di ristrutturazione*) pending as of 23 February 2020**, the debtor may request the grant of a **period not exceeding 90 days for the amendment of the plan**; such period will run from the date of the Court's decision and is not subject to further extension.

The request for the additional period must be filed prior to the date of the hearing scheduled for the Court's approval (*omologa*). The request will be deemed unacceptable if the creditors' majorities on the previous proposal to be amended were not successfully reached.

It is therefore clear from the provisions of the Decree that the amended plan and proposal will again have to pass the assessment test and obtain once more the approval of the creditors.

b) the debtor's need to **amend only the deadlines for the arrangement with creditors procedure (*concordato preventivo*) and debt restructuring agreements (*accordi di ristrutturazione*) already approved.**

In this case, the debtor may file, until the date of the hearing scheduled for the Court's approval (*omologa*), a memorandum setting out the new deadlines (the deferment of which cannot not exceed six months with respect to the original deadlines, otherwise it will be deemed ineligible), accompanied by adequate documentation proving the need for said extension. If the Judicial Commissioner (*Commissario Giudiziario*) issues a favourable opinion, the Court will proceed with the approval (*omologa*), expressly acknowledging the new deadlines.

4. Extension of the deadline for filing the plan and proposal during the pre-arrangement stage (Art. 9, paragraph 4)

According to the ordinary legal framework, the Court

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may grant the debtor who has filed the so-called “*concordato in bianco*” between 60 and 120 days for filing the plan and proposal for the arrangement with creditors (*concordato preventivo*) or the approval request (*domanda di omologazione*) of the debt restructuring agreement (*accordo di ristrutturazione*), which may be extended, if there are justified reasons, by a maximum of 60 days. Where an application for winding-up proceeding (*istanza di fallimento*) is pending, the time limit is 60 days, which may be extended for justified reasons by a maximum of 60 days.

By way of derogation from the ordinary legal framework, the Decree provides for the possibility to obtain an extension of a period already extended, up to further 90 days, even if an application for winding-up proceeding (*istanza di fallimento*) is pending.

Such request must indicate the evidence in support of the time limit extension with specific reference to the events that have occurred as a result of the Covid-19 emergency.

5. Extension of the deadline for filing the debt restructuring agreement (Art. 9, paragraph 5)

The same request referred to in paragraph 4 above may also be filed by the debtor who was granted the deadline provided for by article 182-bis, paragraph 7, of the Italian Bankruptcy Law (*Legge Fallimentare*), specifically claimed for the **filing of the approval request (*domanda di omologazione*) of a debt restructuring agreement (*accordo di ristrutturazione*).**

6. Procedural immunity of applications for winding-up proceedings (Art. 10)

Applications for Winding-up proceedings (article 15 of the Italian Bankruptcy Law), admittance to Forced Administrative Liquidation (*Liquidazione Coatta Amministrativa* – article 195 of the Italian Bankruptcy Law) and Extraordinary Administration of Large Enterprises in a State of Crisis (*Amministrazione Straordinaria delle Grandi Imprese* – article 3 of Legislative Decree no. 270/1999) filed in the period between 9 March 2020 and 30 June 2020 are not admissible.

Only those applications filed by the Public Prosecutor to obtain precautionary or conservative measures to protect the assets or the business are deemed

admissible (art. 15, paragraph 8, of the Italian Bankruptcy Law).

To protect the company's creditors, the period of suspension (9 March 2020 – 30 June 2020), in the case of a subsequent declaration of winding-up, will not be counted for the purposes of calculating the terms set forth in art. 10 of the Italian Bankruptcy Law (winding-up within one year from the cancellation from the relevant Companies' Register) and article 69-bis of the Italian Bankruptcy Law (forfeiture of claw-back actions (*azioni revocatorie*) after 3 years from the declaration of winding-up and 5 years from the completion of the operation).

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