



## New rules on the Italian government's review of investments in Strategic industries at the time of Covid-19 Covid-19 emergency – Italy insolvency and business crisis

With the Law Decree No. 23 of 8<sup>th</sup> April 2020 (so-call "Liquidity Decree"), the Italian Government has adopted new urgent measures, among others in the field of insolvency with a special view to (i) preserving business continuity of enterprises which were solvent before the epidemics and have been impacted by the Covid-19 crisis, and (ii) successful outcome of restructuring proceedings already pending at the time the crisis commenced.

### 1. Inadmissibility of petitions for bankruptcy and for insolvency of large companies filed from march 9<sup>th</sup>

Courts will dismiss petitions filed **between 9<sup>th</sup> March 2020 and 30<sup>th</sup> June 2020** for the declaration of bankruptcy or insolvency of large companies pursuant to Legislative Decree no. 270 of 8<sup>th</sup> July 1999 (so-called Prodi-bis Decree). The only exception to the above rule are bankruptcy/insolvency petitions filed by the Public Prosecutor when precautionary or interim protective measures/injunctions on the enterprise or on the company's assets have been requested.

### 2. Compositions with creditors and debt restructuring agreements

In a nutshell the Law Decree has provided for:

(i) the automatic postponement, by six months, of the deadlines for performing/fulfilling compositions with creditors and debt restructuring agreements already validated (*omologati*) by the competent Courts, when those deadlines expire between 23<sup>rd</sup> February 2020 and 31<sup>st</sup> December 2021;

(ii) for compositions with creditors or debt restructuring agreements whose validation proceeding is pending as of 23<sup>rd</sup> February 2020, the applicant company is entitled, before the Court approval hearing, to

- request to the Court a term (not exceeding ninety days) for the submission of a new composition plan or a new debt restructuring agreement, replacing the one already filed;
- file a brief setting out the new deadlines for the fulfilment of the composition plan or the debt restructuring agreement, provided that the deferral of these deadlines does not exceed six months;

(iii) in case of pending proceedings "with reservation" or "in blank" (*i.e.*, proceedings where the applicant company requests the court to provide a term for the filing of a composition plan or a debt restructuring agreement), when the competent Court has already set the deadline for the submission of the composition plan /debt restructuring agreement, the applicant company has the right to apply to the Court for an additional ninety-day extension of the deadline as a result of the Covid-19 emergency.

### 3. New code of crisis and insolvency is postponed



The entry into force of the new Code of Crisis and Insolvency – with the simultaneous repeal of the Italian Bankruptcy Law (R.D. no. 267/1942, as subsequently amended) – **is moved to 1<sup>st</sup> September 2021**, instead of 14<sup>th</sup> August 2020.

#### 4. Reinstatement of share capital or winding up

Due to the extraordinary circumstances entailed by the epidemics, which could easily lead to generation of losses affecting the registered capital even of companies previously in good economic and financial conditions, the provisions of the Italian Civil Code that require: either the reinstatement of the registered capital, when it has been reduced by more than 1/3<sup>rd</sup> as a consequence of losses (Articles 2446 par. 2 and 3, 2447, 2482 *bis* par. 4-6, 2482 *ter*), or the winding up of the company (Articles 2484, par. 1, no. 4 and 2545 *duodecies*) will not apply **until 31<sup>st</sup> December 2020**.

#### 5. Accounting principles

For financial year 2020, companies may legally assume satisfaction of the test of business continuity as a going-concern, for the purposes of preparing their financial statements, if that condition was in place during the financial year closed prior to 23<sup>rd</sup> February 2020, even if, as of that date, the relevant financial statements had not been approved yet by the competent corporate bodies.

#### 6. No subordination of shareholder's loans

By way of derogation from Articles 2467 and 2497 *quinquies* of the Italian Civil Code, the receivable for repayment of shareholders loans to subsidiaries in a situation of economic and financial distress will not be considered junior as compare to third party loans in the **period between 9<sup>th</sup> April 2020 and 31<sup>st</sup> December 2020**.

# Newsletter

APRIL 2020



Covid-19  
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The Restructuring and Insolvency Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

For further information:

**Stefano Parlatore**

**Partner**

T. +39 02.89.63.071 /  
+39 06.93.18.271  
[sparlatore@legance.it](mailto:sparlatore@legance.it)

**Daniele Geronzi**

**Partner**

T. +39 02.89.63.071 /  
+39 06.93.18.271  
[dgeronzi@legance.it](mailto:dgeronzi@legance.it)

**Daria Pastore**

**Partner**

T. +39 06.93.18.271  
[dpastore@legance.it](mailto:dpastore@legance.it)

**Luca Autuori**

**Partner**

T. +39 02.89.63.071  
[lautuori@legance.it](mailto:lautuori@legance.it)

**Giandomenico Ciaramella**

**Partner**

T. +39 06.93.18.271  
[gciaramella@legance.it](mailto:gciaramella@legance.it)

**Marialuisa Garavelli**

**Counsel**

T. +39 02.89.63.071  
[mgaravelli@legance.it](mailto:mgaravelli@legance.it)

**Sara Colombera**

**Senior Associate**

T. +39 02.89.63.071  
[scolombera@legance.it](mailto:scolombera@legance.it)

or your direct contact at Legance.

# Newsletter

APRIL 2020



Covid-19  
Task Force

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