

Newsletter

May 2017

ILLEGAL LOAN GRANTING TO INSOLVENT COMPANIES: BANK'S JOINT LIABILITY HAS BEEN RECOGNISED

With the decision no. 9983, dated April 20, 2017, the Italian Supreme Court has for the first time explicitly recognized the receiver's entitlement to file a claim for compensation of the damages caused by the bank that, by illegally granting a loan to an already insolvent company and in concert with the Directors, contributed to exacerbate the firm's financial difficulties.

On one hand, the Cassation Court confirms the majority opinion according to which only the single creditor can file a compensation claim against the financing bank for the damages that the latter has provoked to the first, a claim that is still denied to the receiver; on the other hand, it acknowledges the trustee's capacity to bring a compensation claim against the bank whose conduct delayed the ascertainment of the insolvency and therefore intensified it, by means of violating the principles of sound and prudent management also in the evaluation of the opportunity to grant a loan (art. 5 of the Consolidated Law on Banking), and *in conjunction* with the Directors' abuse of credit.¹ The Court individuates precisely in such delay the causal connection between the bank's illegal behavior, aimed at artificially keeping the company running, and the aggravation of the company's financial troubles, on the basis of which the measure of the compensation has to be determined.

This last remark constitutes the further news of the ruling: the Supreme Court expressly legitimates the operations of compensation assessment that identify the suffered damage with the extent of the exacerbation of the insolvency state,² and not merely with the cost of financing, as it has been the case until today, in the rare events in which the receiver was able to prove that the directly damaged subject was the company, and not the single creditor.

The Dispute Resolution department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest for you.

¹According to the legal scheme of the third party's non-contractual liability for a contractual breach.

²Meaning the difference between the debt exposure at the date of the loss of capital and that on the day of the bankruptcy declaration.

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