

Italy Tweaks the Bankruptcy Act to Increase Creditors' Protections

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On 21 June 2013 Italy issued a new emergency decree (Law Decree No. 69 of 21 June 2013, which entered into force on 22 June – the “**2013 Decree**”) introducing a number of provisions aimed at fostering the economy and attracting foreign investments.¹

Certain provisions of the 2013 Decree amend the Bankruptcy Act² by introducing rules aimed at avoiding abuses and increasing transparency.

The 2013 Decree is an additional step in the modernization of Italy's legal regime for debt restructurings. Such review process begun in 2003, when a new law was passed to facilitate Parmalat's restructuring. All the reforms have been aimed at improving the efficiency of restructurings and making the Italian distressed market more appealing for domestic and international investors.

The Bankruptcy Act has been amended almost every year in the last decade,³ the last amendments being those of September 2012 which introduced material changes, facilitating debt restructurings and companies' bailout.⁴

The key feature of the 2012 amendments concerned the *concordato preventivo* proceedings (*i.e.* an arrangement proposal filed by the debtor) and introduced the so called “*pre-concordato*” (or “*concordato con riserva*”) which set forth the possibility for the debtor to file a petition for Court protection, thus benefitting of an automatic stay of between 60 and 180 days, at the end of which the debtor can file a proposal of arrangement with creditors under Article 160 or Article 182*bis* of the Bankruptcy Act. *Pre-concordato* proceedings have occasionally led to abuses by debtors, and left creditors involved in the proceedings with a high degree of uncertainty.

The 2013 Decree introduces three key amendments that increase creditors' protections:

- 1. Avoid abuse.** When seeking the protection of the Court through *pre-concordato* proceedings, debtors now also have to file a detailed record of all its creditors and of their respective claims, thus allowing the Court and the creditors to have a clear visibility on the structure of the debt. Moreover, the Court will be entitled to appoint a judicial commissioner tasked with supervising the activities of the debtor during the automatic stay period, and ensuring that no detrimental actions are taken by the debtor. The judicial commissioner has a duty to report any irregularity to the Court, which will be empowered to interrupt the *pre-concordato* proceedings at any time and declare the insolvency of the debtor upon petition of its creditors or the public prosecutor.

2. Increase transparency. Debtors admitted to *pre-concordato* proceedings now have to: (i) regularly report to the Court, at least monthly, the status of the financial accounts along with the activities set forth to prepare the arrangement proposal; and (ii) file with the Court and make public through the Chamber of Commerce a monthly report on the status of its finances.

3. Enhanced role of creditors. While before the 2013 Decree creditors had no powers or standing to intervene in the *pre-concordato* and were, therefore, passively subject to the decisions of the debtor, now the latest reform states that the Tribunal may, at any time, hear creditors. Therefore, although not expressly set forth in the 2013 Decree, creditors may have the chance to monitor the *pre-concordato* and seek to be heard by the Tribunal in order to raise arguments on any possible acts of the debtor which may be detrimental to their interests and rights (e.g., authorizations to the completion of extraordinary transactions or to pre-payments of certain other creditors).

As a consequence of these measures, the position of creditors will be protected from abuses, and they will have access to information relating to the debtor. This in turn will allow creditors to form a better view of the debtor's situation, thus making pro-active restructuring strategy (e.g. loan-to-own, creditor-led solutions, and the search for a third-party investor) easier to pursue.



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¹ *Inter alia*, the 2013 Decree provides for the exclusive jurisdiction of the Tribunals and the Courts of Appeal of Milan, Rome and Naples on cases involving foreign investors that do not have a permanent establishment in Italy. Such focus of few courts on international cases is expected to increase legal certainty, reduce trial delays and costs.

² Royal Decree No. 267 of 16 March 1942, as subsequently amended.

³ For other updates on the matter, please visit <http://paulhastings.com/publications-items/listing/>.

⁴ For a more comprehensive description of the Italian restructuring proceedings amended as of September 2012, please read Bruno Cova, Antonio Azzarà, Bernadette Accili, Paolo Manganelli, and Anteo Picello's "*New Italian Measures Facilitate Debt Restructuring And Protect Dip Financing*", in Pratt's Journal of Bankruptcy Law, Vol. 8, No. 7, October 2012, p. 654.