



## LEGAL MEMO

29 SEPTEMBER 2021

### BUSINESS CRISIS AND CORPORATE RESTRUCTURING

#### NEW MEASURES

**Decree-Law No. 118/2021 (“D.L. 118”)** – issued last August 24th – introduced urgent measures regarding business crisis and corporate restructuring, as well as further urgent measures concerning the Italian justice system.

This document addresses the measures and procedures intended to enable companies and entrepreneurs to mitigate and overcome the negative effects stemming from the health emergency caused by Covid-19.

Firstly, D.L. 118 postponed – until May 16th, 2022 – the entry into force of the “Corporate Crisis and Insolvency Code” (“**Code**”) which, in turn, has been drafted with a view to promptly detecting the crisis of enterprises and entrepreneurs, in order to avoid their insolvency.

In addition to postponing the entry into force of the Code, the new rules provided that the “Alert and Assisted Crisis Resolution Measures” – covered by Title II of the Code – will only come into effect on December 31st, 2023. In line with the idea that underlies the entire Code, the purpose of these measures is to prevent the situation of economic difficulty from becoming unmanageable and to restore the debtor’s financial stability.

More specifically:

- (i) Alert Measures consist of a set of reporting obligations on the part of the company’s supervisory bodies and qualified public creditors, such as the Revenue Agency;
- (ii) the Assisted Crisis Resolution Procedure, on the other hand, can be accessed exclusively by the debtor either following the completion of the above Alert Measures or before resorting to the latter: this procedure aims at allowing the debtor to reach a negotiated solution with the creditors with the support of the Company Crisis Resolution Body (OCRI), that will act as a mediator.

D.L. 118 also introduces the “Negotiated Corporate Crisis Settlement”, that will be effective as of November 15th, 2021.

This voluntary, out-of-court, procedure can be accessed by both commercial and agricultural companies facing financial or economic difficulties that – albeit being likely to result in the crisis or insolvency of the company – may successfully be overcome.

The Negotiated Corporate Crisis Settlement enables the entrepreneur to request – via an online platform managed by the Chambers of Commerce – the appointment of an independent expert, who will facilitate the negotiations with the creditors and the renegotiation of contracts. When filing the request for the expert’s appointment, the entrepreneur must provide – inter alia – the financial statements pertaining to the last three annual financial periods, a clear activity report, a financial plan for the upcoming six months, the business activities he intends to carry out and a list of the creditors

*Postponement of  
the entry into  
force of the  
“Business Crisis  
and Insolvency  
Code”*

*The “Negotiated  
Corporate Crisis  
Settlement”:  
overview*



## LEGAL MEMO

29 SEPTEMBER 2021

with their respective credits.

The *Negotiated Corporate Crisis Settlement* remains confidential and out-of-court until the entrepreneur requests the application of asset protection measures, the granting of pre-deductible loans, or the sale of the company which, in turn, will require the intervention of the Court.

While negotiations are carried out, the entrepreneur retains the ordinary and extraordinary management of the company, however he must inform the expert in advance of any acts of extraordinary administration, as well as of payments that are not consistent with the negotiations or the prospects for recovery.

The *Negotiated Corporate Crisis Settlement* is successful when the parties identify a solution to overcome the crisis situation.

Parties may, alternatively: enter into an agreement with one or more creditors; conclude a “moratorium agreement” pursuant to Italian Bankruptcy Law; enter into an agreement signed by the entrepreneur, the creditors and the expert.

The entrepreneur may also request the approval of a debt restructuring agreement pursuant to the Italian Bankruptcy Law.

Finally, the new rules enable the entrepreneur: to draw up a certified recovery plan; to submit an application for a simplified agreement for the liquidation of assets; to access one of the procedures envisaged by the Italian legal system.

If the parties involved in the negotiations fail to identify a suitable solution to overcome the state of crisis, the entrepreneur may submit an application for a “Simplified Composition for the Liquidation of Assets”. In this regard – within 60 days of notification of the expert’s final report – the entrepreneur may submit a proposal of composition that envisages the transfer of assets, subsequently requesting approval of the proposal by resorting to Court.

When filing for the expert’s appointment or at later time – the entrepreneur may also apply for *asset protection measures via the online platform* set up by the D.L. 118.

Once the request for the measures’ application has been published in the Companies’ Registry, creditors are prevented from acquiring *pre-emption rights* – unless agreed with the entrepreneur – and may not begin or continue enforcement and precautionary actions on the entrepreneur’s assets, nor on the goods and rights pertaining to the business activity.

Asset protection measures may not *last less than 30, nor more than 120 days*: at the request of the parties and having obtained the expert’s opinion, the judge may *prolong* them. However, the *overall duration* of the measures may not exceed *240 days*.

***The “Negotiated  
Corporate Crisis  
Settlement”:  
possible outcomes***

***Simplified  
Composition for  
the Liquidation of  
Assets***

***Asset protection  
measures***



## LEGAL MEMO

29 SEPTEMBER 2021

In addition to the above, D.L. 118:

- ❖ enables *companies falling below certain thresholds* under Italian Bankruptcy Law and *business groups* to access the *Negotiated Corporate Crisis Settlement*;
- ❖ stipulates that – upon publication in the Companies’ Registry of the agreement with one or more creditors – the Revenue Agency shall grant the entrepreneur who so requests an *instalment plan* for a maximum of *72 monthly instalments*;
- ❖ anticipates the entry into force of several *procedures* envisaged by the Code, such as the *Restructuring Agreements with Extended Effectiveness* which can now be concluded with all categories of creditors, rather than just with those who are financial intermediaries;
- ❖ extends the duration of certain *extraordinary and temporary institutions* introduced by the emergency legislation. In particular, the *time-limit* within which the entrepreneur may renounce to the *“Blank Composition”* with creditors by resorting to a Certified Recovery Plan has been extended to *December 31<sup>st</sup>, 2022*;
- ❖ stipulates that – pending the state of emergency caused by the pandemic – the *term* for submitting the proposal, plan and professional report concerning the *“Blank Composition”* can be *granted* to the maximum extent of *120 days* even pending a bankruptcy petition;
- ❖ provides that – *until December 31<sup>st</sup>, 2021* – actions concerning the termination of the *“Arrangement with Creditors”* and the Declaration of Bankruptcy will be inadmissible with regard to entrepreneurs who have applied for an *“Arrangement with Creditors on a Going Concern Basis”* approved after *January 1<sup>st</sup>, 2019*.

**Other relevant provisions**

\* \* \* \* \*

*For any clarification or further information on the above subject please contact:*

- Alessandro Malangone – email [a.malangone@morace.com](mailto:a.malangone@morace.com)
- Erica Maida – email [e.maida@morace.com](mailto:e.maida@morace.com)  
Tel.: +39 081 420 61 06 - Via Guantai Nuovi, 11 - 80133 – Napoli (Italy)
- Pierluigi De Biasi – email [p.debiasi@morace.com](mailto:p.debiasi@morace.com)  
Tel.: +39 02 38 31 92 32 - Via San Maurizio, 19 - 20123 – Milano (Italy)