

Italy

Rescue procedures in insolvency

Phase	Royal Decree of 16 March 1942, no. 267, Discipline of bankruptcy and of insolvency proceedings (Bankruptcy law); Legislative decree of 9 January 2006, no. 5, Comprehensive reform of insolvency proceedings; Decree Law of 27 June 2015, no. 83, as converted into Law 6 August 2015 no. 132, Urgent measures concerning bankruptcy, the civil code, the civil procedure code and the organisation and functioning of judicial administration. Reform of the rules on corporate crisis and insolvency procedures; Law 19/10/2017 n. 155; Legislative decree 12 January 2019, n. 14, Code of business crisis and insolvency in implementation of the law of 19 October 2017, n. 155. Legislative decree 12 January 2019, n. 14, Law no. 83 of 17 June 2022
Native name	Regio Decreto 16 marzo 1942, n. 267, Disciplina del fallimento, del concordato preventivo, dell'amministrazione controllata e della liquidazione coatta amministrativa; Decreto legislativo 9 gennaio 2006, n. 5 Riforma organica della disciplina delle procedure concorsuali; Decreto legge 27 giugno 2015, n. 83, coordinato con la legge di conversione 6 agosto 2015, n. 132, 'Misure urgenti in materia fallimentare, civile e processuale civile e di organizzazione e funzionamento dell'amministrazione giudiziaria'; Decreto legislativo del 12 gennaio 2019, n. 14, Codice della crisi d'impresa e dell'insolvenza in attuazione della legge 19 ottobre 2017, n. 155. Decreto legislativo 12 gennaio 2019, n. 14, Decreto Legislativo del 17 giugno 2022 n. 83
Type	Rescue procedures in insolvency
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Article

Bankruptcy law, articles 1, 160-186 bis; Legislative Decree no. 5/2006, articles 141-146; Decree Law no. 83/2015, articles 1-4, 8; Law 19/10/2017 n. 155. article 13, Law no. 83 of 17 June 2022

Description

In September 2017, a new law covering bankruptcy and insolvency procedures was approved and put into force by Legislative decree 12 January 2019, n. 14.

The new law lists three indicators which should alert the company about an upcoming insolvency risk and prompt it to take action:

- lateness in paying workers' wages;
- lateness in paying suppliers;
- budget indexes not in line with the ones established by the national council of business consultants (Consiglio nazionale dei dottori commercialisti).

These alerts should prompt the company to take action and undergo negotiations with its creditors to enable the company to go back to normal. Only if these negotiations fail or if there is a clear evidence that the company is not willing to negotiate, the matter can be taken to court after 60 days. In this case the statutory auditors need to inform OCRI (Observatory for companies rescue).

A second system of alerts is external:

- Taxes: the revenue Agency is obliged to report those cases in which the VAT liability is equal to at least 30% of the turnover for the period in which the last liquidation refers
- Contribution and social security: National Institute of Pensions (INPS) has to report when there is failure to pay, for over 6 months, social security contributions amounting to more than half of those due in the previous year, and above the threshold of €50,000
- Credits: when the company has overdue credits exceeding the time limit of 90 days and exceeding the amount of € 500,000 for sole traders and €1 million for companies, an agent is nominated to rescue those credits

The entrepreneur needs to present a plan containing:

- causes of the crisis;
- strategies and actions planned to achieve a good financial standing again;
- list of creditors and amount of credits being renegotiated;
- new funding streams;
- timeline for the new plan.

An auditor can be called upon to certify that company's financial information is correct and that the plan is feasible from an economic and legal point of view.

An agreement must be reached with creditors representing at least 60% of the credits being renegotiated.

There is a possibility to agree with creditors which represent only 30% of the credits but the plan must not envisage:

- a suspension of other creditors' payments;
- the entrepreneur must not request protection of assets.

Changes to a plan can be made, but agreement from creditors must be reached.

Both the amended plan and the attestation must be published in the business register (article 58) and the debtor is charged by giving notice to creditors who, in turn, can lodge an opposition within the term of 30 days.

This set of operations is excluded from penal law consequences (except in cases where there is malevolent intent) and tends to favour solutions which can ensure business continuity as well as debts repayment.

The law no.75 of March 3, 2022, from the Ministry of Justice, established an electronic register for entities responsible for managing business crisis and insolvency procedures. The register, accessible online, is divided into ordinary and OCRI sections. Registrants must meet specific professionalism and integrity requirements. The registration application must be submitted to the Department for Judicial Affairs of the Ministry.

The Law no. 83 of 17 June 2022 integrated EU Directive 2019/1023 into Italian law, focusing on preventive restructuring, disqualification, and insolvency procedures as part of the National Recovery and Resilience Plan. This law amended existing decrees to enhance the framework for managing business crises and insolvencies. It introduced mandates for entrepreneurs to establish structures for early crisis detection and emphasized improved consultation processes with unions. Significant changes included a shift towards negotiated compositions for business crises, streamlined access to crisis and insolvency management tools, and enhanced creditor involvement in judicial liquidation processes. The law also prioritized business continuity over liquidation in corporate group insolvencies and aligned the roles of commissioner liquidators with curators. The second part of the law revised and revoked certain provisions from previous legislative decrees, updating the Code. The law was started to take effect on July 15, 2022.

The law no.103 of August 10, 2023, converted the decree-law of June 13, 2023, no. 69, which contains urgent provisions related to European Union obligations. A key provision, Art. 1-bis, introduces transitional measures on business crisis in line with the directive (EU) 2019/1023, aiming to ensure adequate protection for creditors and to ensure consistency with the objectives of the National Recovery and Resilience Plan.

Commentary

The law which entered into force in January 2019 eases the access to a pre-bankruptcy agreement, strengthens powers of the trustees, and promotes rescue proposals that address the crisis by ensuring business continuity.

With the enactment of the Law of 8 March 2019, n. 20, a new delegation has been assigned to the government for the promulgation of integrative and corrective dispositions of the reform of the discipline of the business crisis and insolvency. The reform contained in Legislative Decree of 12 January 2019, n. 14, could therefore undergo modifications or additions in the near future.

The Legislative Decree No. 83 of 2022, integrating the EU Directive 2019/1023, marked a pivotal change in Italy's approach to business crisis management. It merged past emergency measures, initiated a unified system for crisis handling, and highlighted the importance of business continuity. The decree also heralds a national digital platform for crisis management.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other
Involvement (others)	Creditors, auditors, Council of business consultants (Consiglio nazionale dei dottori commercialisti), OCRI (Observatory for companies rescue)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

- [DECRETO 3 marzo 2022, n. 75](#) ~~~ [LEGGE 10 agosto 2023, n. 103](#) ~~~ [DECRETO LEGISLATIVO 17 giugno 2022, n. 83](#) ~~~ [Royal Decree no. 267/1942](#) ~~~ [Legislative Decree no. 5/2006](#) ~~~ [Decree Law no. 83/2015](#) ~~~ [Law 19 Ottobre 2017, n. 155](#) ~~~ [Legislative Decree 12 January 2019, n. 14](#) ~~~ Sandulli, M. and D'Attorre, G. (2016), *Manuale delle procedure concorsuali*, Giappichelli Editore, Torino ~~~

Citation

Eurofound (2016), Italy: Rescue procedures in insolvency, Restructuring legislation database, Dublin