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Recent Developments in the Italian Insolvency System: the “Blank Composition”



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The so called “Blank Composition” pursuant to Article 161, para. 6 of the Italian Bankruptcy Law (the “IBL”) is an important restructuring and insolvency tool in the armoury of the Italian restructuring and insolvency professional. Its purposes are (i) enabling a quicker resolution of a distressed debtor, (ii) protecting the debtor’s assets and business through the automatic stay, and (iii) facilitating the continuation of the business.

1. Main features of the Blank Composition

A distressed debtor may file with the Court a petition pursuant to Article 161, para. 6 of the IBL, in order to benefit from an immediate automatic stay of any enforcement proceedings and precautionary actions, as well as a prescribed period within which to file a plan to resolve its difficulties (from 60 to 120 days, unless a further extension of 30/60 days is granted). The result may be either a composition with creditors or a debt restructuring agreement.

Once the petition is registered in the Companies’ Register, creditors are prohibited from starting or carrying on enforcement, foreclosure or interim proceedings over the company’s assets. The debtor is thus protected from any potential actions by creditors and may switch from a creditor composition proceedings (marked by greater court involvement) to a debt restructuring agreement (mainly based on negotiations with major creditors and implemented if a prescribed consent threshold is reached), without losing the interim protection granted by the Court in order to preserve the company’s assets.

The debtor and its advisors may work in “dual track” on both remedies, so that—in the event that creditors do not approve the proposed debt restructuring agreement—the debtor will be able to submit the composition proposal within the prescribed terms.

After the filing of a petition pursuant to Article 161, para. 6 of the IBL, the Court:

- grants the following term for the filing of the proposal and of the plan: 60 days generally applicable (and mandatory, if an insolvency procedure is pending), while 120 days is granted, if requested by the company, in relation to complex and wide ranging restructurings;
- prescribes periodical reporting duties;
- may appoint an official receiver or commissioner (*commissario giudiziale*).

After filing a Composition the debtor may carry out urgent extraordinary activity with the authorization of the Court, and following submissions of any receiver or commissioner, appointed to the debtor. In particular, court authorization would be required if the proposed acts could have a negative impact on the assets of the company (e.g. reduction of value, or the incurring of losses, without the prospect of creditors achieving any material benefits).

2. Latest amendments to the Blank Composition

Early cases showed some abuse of the Blank Composition procedure. The new legal remedy was on occasion employed as a means of delaying a declaration of insolvency and for obtaining the benefit of the automatic stay, with no serious prospect of achieving a business restructuring, or even an orderly liquidation, with detrimental effects for creditors and stakeholders. In order to remedy such possible abuses and distortions, law decree no. 69 of 21 June 2013 (converted into law no. 98 of 9 August 2013) has made the following amendments, with the objective of increasing both the protection for creditors, and the ability of the Court and the official receiver or commissioner to control the process:

- the official receiver or commissioner may be appointed in the early stage of proceedings by the Court and is entitled to inform the Court of any fact which may cause revocation of the composition (e.g., fraudulent acts, hiding or diversion of assets), with the court having the power in consequence to issue a declaration of insolvency;
- the debtor must make reports on (at least) a monthly basis and under the supervision of the official receiver or commissioner, if appointed;
- an updated list of creditors shall be filed, to facilitate greater creditor involvement;
- monthly financial statements shall also be filed with the Companies’ Register, so as to provide visibility of the debtor’s business activities;

- the proceedings may cease earlier in the event of fraudulent acts or activities that are consistent with the filing of a composition proposal and plan.

Furthermore, law decree 24 June no. 91 (converted into law 11 August 2014, no.16) provides the revocation of a recent former, provision of law (Article 11, para. 3-quarter of the law decree dated 23 December 2013) according to which, if a Blank Composition were not successful any new financing granted for the purposes of, and/or in execution of, a Blank Composition would not be afforded a priority ranking.

The new rule is likely to increase the already substantial use of the Blank Composition procedure. That should in turn have a positive effect on both business preservation and the prospects of carrying out successful restructurings.

Indeed, the previous procedures were strongly criticized, because they were perceived as limiting the ability of business to obtain new bank and other institutional funding, as such institutions would not agree to lend new money without a guaranteed priority ranking in the event of subsequent insolvency. Furthermore, the new rule also appears to be consistent with the Commission Recommendation of 12 March 2014 of a new approach to business failure and the priority treatment of new funding. insolvency on protection for new funding. Under paragraph III, D of that recommendation:

- new financing, including new loans, the sale of certain assets by the debtor and debt-equity swaps, agreed upon as part of the restructuring plan and confirmed

by the court should not be declared void, voidable or unenforceable as acts detrimental to the general body of creditors;

- providers of new financing as part of a restructuring plan which is confirmed by a court should be exempted from civil and criminal liability relating to the restructuring process; and
- exceptions to the rules giving new financing priority should be made where fraud is subsequently established in relation to that new financing.

3 Final Considerations

The Blank Composition is no doubt an important legal remedy within the raft of changes made to Italian restructuring and insolvency processes since 2005. The Blank Composition allows for quicker resolution of a debtor's financial difficulties and the development of effective and timely solutions under judicial protection but in a manner that provides a viable alternative to traditional liquidation proceedings.

The high number of filings for Blank Composition clearly illustrates the success of this legal tool. Indeed, the Blank Composition is helpful for debtors in giving them the benefit of the automatic stay, as well requiring the restructuring to be completed within a reasonable timeframe. In short, these latest amendments seem to have enhanced the potential of the Blank Composition, making it more akin to established restructuring processes in other jurisdictions such as reorganisations under Chapter 11 of the US Bankruptcy Code. 🇮🇹



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