

Business crisis: a brief look at the Decree Law approved on 29 April 2016

Contents

1. Introduction
2. Measures to help businesses needing finance
3. Initial thoughts on the new measures

1. Introduction

In Law Decree of 29 April 2016 (the "**Decree**"), published on 3 May 2016 in the Official Gazette, the Italian government introduced, among other provisions, measures to help businesses in need of funding, to collect debts and to streamline, through shortening the timeframes, the bankruptcy and insolvency procedures.

The new measures are the first concrete results of the process initiated by the commission established by the Ministry of Justice by Decree of 24 February 2015 (the "**Rordorf Commission**") to put forward proposals for comprehensive reform in the business crisis and insolvency arenas. The commission's work has resulted in the recent approval by the Italian Government of the bill put forward by the Government for the wholesale reform of these areas (the "**Bill**").

2. Measures to help businesses needing finance

2.1 The "non-possessory lien"

The Decree, applying the guidelines laid down by the Bill and with a view to meeting businesses' financial needs, provides, for the first time in an organic way, for the "non-possessory lien" i.e. a form of guarantee that does not involve the removal of the asset from the debtor, and which enables him to continue to use the charged asset in the production process of its business activities.

This lien may be taken over immovable property, which may be tangible or intangible, and may also include future, determined or determinable, property; in more detail, the property may also be constituted of one or more than one product categories or including different properties up to a total value, with the exception of registered assets.

If there is an event that provokes the enforcement of the pledge, the creditor has the right to proceed with:

- a. the sale of the assets which are subject to the lien and applying the sale proceeds in satisfaction of the claim;
- b. enforcement of the debt subject to the lien up to the amount guaranteed;
- c. the lease or rental of the asset covered by the lien and applying the installments in satisfaction of the claims;
- d. the assignment of the assets covered by the lien, up to the amount guaranteed, provided that the contract specifies in advance the specific criteria and arrangements for evaluating the collateral value of the asset covered by the lien and the lien interest.

2.2 The acceleration clause (*il patto Marciano*) in new loan agreements

The Decree introduces the ability to insert, with immediate effect, special acceleration clauses in loan agreements. In particular, in the case of a loan secured on immovable property (which cannot be the entrepreneur's home), it is possible to enter into a contract for the sale of the asset, which becomes effective if the borrower defaults.

This document is delivered for informative purposes only.

It does not constitute a reference for agreements and/or commitments of any nature.

For any further clarification or research please contact:

Rome

Antonio Auricchio
Tel. +39 06 478751
aauricchio@gop.it

Gabriella Covino
Tel. +39 06 478751
gcovino@gop.it

Giuseppe De Simone
Tel. +39 06 478751
gdesimone@gop.it

Padua

Paolo Gnignati
Tel. +39 049 6994411
pgnignati@gop.it

Turin

Luca Jeantet
Tel. +39 011 5660277
ljeantet@gop.it

Rome

Milan

Bologna

Padua

Turin

Abu Dhabi

Brussels

Hong Kong

London

New York

www.gop.it

There are, however, 2 further points in relation to the default. In the case of a loan where repayment is by monthly installments, the default arises when non-payment continues for more than six months after the failure to pay at least three installments.

In the case of a loan which is repayable in a lump sum or through installments at intervals of more than one month (for example, quarterly or six-monthly installments), the default arises six months after the failure to pay an installment.

The transfer value in the event of enforcement of the acceleration clause is determined by a third party, under a procedure agreed between the parties. If the value of the asset at the time of sale is higher than the outstanding debt, the creditor must give the debtor the difference between the two values.

Finally, where there is already a loan agreement in place, the parties can renegotiate that agreement and, in this context, may include an acceleration clause.

2.3 Other new measures aimed at speeding up the insolvency and debt recovery procedures

Additional measures aimed at speeding up the insolvency and debt recovery procedures are:

- a. the possibility of using communication technology for hearings and meetings of creditors;
- b. a provision enabling the dismissal of a receiver that does not respect the deadlines set for the procedure;
- c. the establishment, at the Ministry of Justice, of a digital register of bankruptcy and enforcement actions;
- d. reduction of the times for opposition to enforcement actions;
- e. an obligation on the court to order provisional enforcement of a payment order for the uncontested amounts, even if there is opposition from the debtor;
- f. the ability of a purchaser of a property through a judicial auction to specify the assignment of the same in favour of a third party.

3. Initial thoughts on the new measures

The innovative aspect of the Decree, especially from the perspective of management and reaching a desirable solution to the business crisis, is that it is a systematic and organic approach to reform rather than spasmodic and crisis-driven. This in turn brings about a linear system, which also takes account of the stresses from the European Union, and replaces one that had, over time, become too fragmented.

In particular, the introduction of the new non possessory lien, allowing the use in the production process of charged goods, should make it easier to meet business requirements. There is however also the risk that if the lien is used in a way that is not particularly rational and consistent with a real recovery plan, this could result in a reduction of collateral and which, through the additional protection that it provides, could benefit certain categories of creditors at the expense of creditors that are unsecured.

INFORMATION PURSUANT TO ARTICLE 13 OF LEGISLATIVE DECREE NO. 196/2003 (Data Protection Code)

The law firm Gianni, Origoni, Grippo, Cappelli and Partners (hereafter "the Firm") only processes personal data that is freely provided during the course of professional relations or meetings, events, workshops, etc., which are also processed for informative/divulgence purposes. This newsletter is sent exclusively to those subjects who have expressed an interest in receiving information about the Firm's activities. If it has been sent you by mistake, or should you have decided that you are no longer interested in receiving the above information, you may request that no further information be sent to you by sending an email to: relazioniesterne@gop.it. The personal data processor is the Firm Gianni, Origoni, Grippo, Cappelli & Partners, whose administrative headquarters are located in Rome, at Via delle Quattro Fontane 20.