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Recent changes to Italian restructuring legislation



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The Italian Council of Ministers, in its session of 4 September 2024, after having been examined by the Justice Commissions of both the Chamber of Deputies and of the Senate and with the comments of State Council, has approved a Legislative Decree (*Decreto Correttivo ter*) relating to supplementary and amending provisions of the Business Crisis and Insolvency Code, first introduced in Italy through the Legislative Decree of 12 January 2019 no. 14. The last step before becoming effective is the publication in the Official Gazette which will take place shortly.

The amendment text is made up of 57 articles and modifies many of the provisions introduced to replace the bankruptcy legislation referred to in Royal Decree 267/1942. This means that, in the short space of a few years, we have already been faced with a third corrective decree, this latest text included within the framework of commitments undertaken by the National Recovery and Resilience Plan.

Some material errors have been corrected and regulatory references updated. Among the main innovations that stand out are changes regarding the

Main goals of the text:

- Correcting defects in regulatory coordination that emerged following previous corrective decrees.
- Editing errors in the previous decree.
- Updating regulatory references.
- Providing clarifications on interpretative doubts emerging during the application of the Business Crisis and Insolvency Code.

mechanism of early reporting of company crisis with mitigation or even exclusion of liability for auditors who promptly act by reporting to the relevant administrative body.

There is also news regarding the role of professionals who are required to attend continuous professional training courses.

Negotiated Settlement

The main focus of the corrective text is called negotiated settlement, which can be defined as a path that the entrepreneur voluntarily decides to undertake, aimed at reaching an agreement with creditors and other interested parties, so as to allow

the company to overcome a situation of temporary imbalance and to ensure the business is in continuity.

The negotiated settlement has the aim of leading to a real settlement of the interests of the parties involved in the business crisis and is achieved through bargaining inspired by the principles that characterize agreements in private law, such as good faith, fairness and solidarity between the parties, as well as the balance and contractual reasonableness with which the company's recovery is achieved, with greater satisfaction in the long term.

Thus, Italian law is moving from an assisted, compulsory settlement to a negotiated settlement, which the entrepreneur independently decides to access, even in the event of alerts. In fact, the procedure, is conceived as operating on a voluntary basis and located outside the courtrooms. Only the entrepreneur can spontaneously make use of the process when the recovery of the company is "reasonably achievable", without having the fear of finding himself in the presence of the Public Prosecutor in the event of failure. ■



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