

# Law decree 23/2020: interventions on the norms regulating distressed companies



# Focus on...

Chapter II of Law Decree n. 23/2020 (so-called *Liquidity Decree*, entered into force on 9 April 2020 and currently being converted into Law) includes measures to guarantee the going concern of businesses affected by the current severe economic conditions further to the shut-down of productive activities and by the socio-economic impact of the Covid-19 epidemiological emergency.

Below is an overview of the new provisions introduced on distressed companies (besides those on financial support and on the corporate and statutory regulation) and focused on three main points: the deferment of the entry into force of the Code of corporate crisis and insolvency to 1 September 2021 (art. 5), the extension of the terms for the conclusion of insolvency proceedings and restructuring agreements already approved or still pending (art. 9) and the bar to prosecutions of all applications for bankruptcy filed in the period between 9 March and 30 June 2020 (Art. 10).

## **Art. 5 - Deferment of the entry into force of the Code of corporate crisis and insolvency as under Legislative Decree n. 14 dated 12 January 2019**

Art. 5 of Law Decree n. 23/2020 provides for the deferment of the entry into force of the Code of corporate crisis originally fixed - with exceptions - on 15 August 2020. As a consequence, all the provisions contained in the Code of corporate crisis not yet enforced will come into force on 1 September 2021.

As mentioned in the explanatory memorandum to the Law Decree, it can actually be anticipated that, as at 1 September 2021, the severe pandemic-related economic downturn will be over and it will thus be possible to enact all the measures aimed at strengthening businesses, so as to avoid prejudicing the deep shift in perspective imposed by the Code of corporate crisis on the safeguard and restructuring of distressed businesses, providing for quick interventions to avoid insolvency.

It is worth underlining that the agreed deferment does not concern those provisions of the Code of corporate crisis already implemented on 16 March 2019 and still in force, further to an express exception to the general provision; among these are those concerning amendments to the Civil Code (art. 375 and following articles of Legislative Decree n. 14/2019), such as, in particular, the organisational structures of businesses and companies (art. 2086, 2257, 2380-bis, 2409-novies and 2475 of the Italian Civil Code), the liability of Directors (art. 2476 and 2486 of the Italian Civil Code) and the appointment of a board of statutory auditors (art. 2477 of the Italian Civil Code). With reference to the latter item, we further specify that Law Decree n. 162/2019 (so-called *Milleproroghe*), converted into Law n. 8 dated 28 February 2020 introduced an extension of the terms for the appointment of a board of statutory auditors, originally set for 16 December 2019, until the date of approval of the financial statements for FY 2019 (currently 28 June 2020, i.e. within 180 days from the FY closing day).

As a final note, we also specify, as concerns early warning tools (art. 12 and following articles of Legislative Decree n. 14/2019), that the reporting obligation for the board of statutory auditors and qualified public creditors, initially due to become effective on 15 August 2020, had already been postponed to 15 February 2021 by Law Decree n. 9/2020 and now has now further been deferred until 1 September 2022.

## Art. 9 - Provisions on insolvency proceedings and restructuring agreements

Art. 9 of Law Decree n. 23/2020 introduces some provisions aimed at regulating insolvency proceedings and restructuring agreements underway or not yet concluded, in order to avoid the negative economic impact of the current emergency situation on those companies which had initiated such of composition with creditors procedures before the spreading of the pandemic.

Specifically, these measures are aimed, on the one hand, at safeguarding the enforcement of insolvency proceedings and restructuring agreements already approved, which could be otherwise irrevocably jeopardised as a consequence of the current healthcare emergency; on the other hand, at granting the possibility to the debtor to formulate, before its approval, a new proposal of composition with creditors or restructuring agreement, or to proceed with a unilateral amendment of the terms of fulfilment, originally identified.

More in detail, art. 9 of Law Decree n. 23/2020 provides for:

- the extension, for six months, of the terms of fulfilment included in insolvency proceedings and restructuring agreements already approved and expiring in the period included between 23 February 2020 and 31 December 2021;
- the possibility for the debtor to file, during the approval procedure of insolvency proceedings and restructuring agreements pending as at 23 February 2020 and until the hearing for the approval, an application for the granting of a term, not exceeding 90 days and non-extendable, to draft a new proposal of composition with creditors or restructuring agreement. The new term starts from the date of the order issued by the Court upon accepting the application;
- the possibility for the debtor to request, until the date of the hearing for the approval, the deferment of the terms of fulfilments contained in the original proposal and agreement. In this case, therefore, the amendment is limited to terms already agreed upon, which cannot be deferred up to

more than six months, as expressly provided under art. 9, para. 3 of Law Decree n. 23/2020;

- the possibility for debtors who had been granted the application of the terms under art. 161, para. 6 of Bankruptcy Law - in case the extensions of the original terms, if any, are expiring - to benefit from a further 90 - days extension.

## Art. 10 - Temporary provisions on appeals and applications for declaration of bankruptcy and insolvency

As concerns the declaration of bankruptcy and the declaration of insolvency, reference is made to the provision under art. 10 of Law Decree n. 23/2020. This introduced a general bar to prosecution for the short period included between 9 March 2020 and 30 June 2020 for all appeals filed for the declaration for bankruptcy, pursuant to art. 15 and 195 of the Bankruptcy Law, as well as for the declaration of insolvency, pursuant to art. 3 of Legislative Decree n. 270/1999.

The scope of application of the abovementioned provision includes all types of applications involving business with such dimensions as not to be subject to the provisions of Legislative Decree n. 347/2003 (so-called *Marzano Decree*); moreover, upon expiration of the period indicated, it will be possible to file again applications for the declaration of bankruptcy and insolvency.

The sole exception to the above is represented by the provisions of art. 10, para. 2 of Legislative Decree n. 23/2020. This is the case in which the appeal is filed by a public prosecutor with a request to issue protective measures in order to avoid possible dissipations, as under art. 15, para. 8 of Bankruptcy Law. In such cases, according to the explanatory memorandum, the general bar to prosecution could favour companies which are potentially indulging in a criminal dissipative conduct, to the detriment of creditors, thus compromising the need to suppress seriously criminal behaviours.

Our professionals would be pleased to provide you with any further information you may need.

Please refer to Clever Desk on our website - [bgt-grantthornton.it](http://bgt-grantthornton.it) - for further details on any issues concerning COVID-19.

