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# RESTRUCTURINGS AND REORGANIZATIONS IN ITALY

*Enterprise Restructuring in Italy: An Overview*

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# Enterprise Restructuring in Italy: An Overview

1. The Italian insolvency law reform was enacted with three different Government and Parliament Acts between 2005 and 2007. The reform didn't address all the insolvency discipline. Extraordinary administration, reserved to the biggest enterprises, continues to be governed by the two Acts of 1979 and 2003. Amending the old Insolvency Act of 1942, the Government wanted:

a) To increase the possibilities of an agreement between the entrepreneur and creditors to restructure the enterprise or also to settle the insolvency.

b) To facilitate access to the Court and encourage an agreement among creditors. The aim was to remove all the difficulties to such agreement according to the old law. It was recognized that the banks were not inclined to finance the enterprise restructuring because the payments on their loans could be recovered as avoidable transfers in case of bankruptcy. The banks were also exposed to suits for damages from other creditors because the financing could be considered unfair prolonging the enterprise's life according to the insolvency situation. Also suppliers were not inclined to supply the restructuring enterprise because the payments could be recovered as avoidable transfers in case of bankruptcy.

c) To create procedures for restructuring through a composition with creditors to settle insolvency in the creditors' interest. The previous system was intended to allow the entrepreneur to use the agreement procedures only when his conduct had been fair. Because of this, many times it wasn't possible to save the enterprise even when an agreement could be useful for the creditors and even in presence of a new management.

d) To reduce the judge's power in the procedure and to increase the creditors' powers. The slogan was more power to the market and less power to the judge. The bargaining between the debtor and the Court on the content of the reorganisation plan could mean the loss of precious time that could be used to save the enterprise. Also in a liquidation, the general opinion was that removing in part the judge's power would result in less bureaucracy.

e) To reduce the number of bankruptcy cases, reserving the procedure to serious insolvency cases, and to avoid the excessive length of proceedings and the resulting lower distribution to creditors.

f) To eliminate the debtor's civil incapacity after the procedure's end and to accord him the discharge if he was a physical person.

g) To revise the bankruptcy crimes discipline according to the new principles established by the reform.

The Insolvency law reform introduced three different new proceedings focused on

restructuring the enterprise through an agreement with creditors. All these proceedings, as we'll see, are founded on the "debtor in possession" principle, but with varying degrees of publicity. The legislature also modified liquidation proceedings to enhance the possibility to sell the assets as a going concern in a shorter time. The extraordinary administration was not touched by the reform, but nevertheless was modified to address problems arising from the Alitalia crisis. I will treat shortly the main features of the three new proceedings introduced by the Insolvency law reform and I will give some information on the extraordinary administration.

The "concordato preventivo" (composition with creditors) procedure maintains only the name of the procedure provided by the 1942 Act. The legislature conserved also the traditional Italian approach that reserves all the insolvency procedures only to entrepreneurs.

The entrepreneur may file a petition to the Court to be admitted when he is insolvent, but also when there is only a crisis situation and technically he is not insolvent. The law doesn't say when there is a crisis situation, but generally we can say that this situation occurs when there are financial or economical difficulties in the enterprise management which have not yet reached insolvency. It has been said by initial commentators that crisis implies the danger of impending insolvency, but not actual insolvency. That means that is possible to ask to be admitted to the procedure when it's still possible to reorganise the enterprise and reach an agreement with creditors.

Only the debtor may file the petition. In this situation creditors are not allowed to ask to open a procedure. But, if insolvency is already reached, they can file a petition asking for the liquidation. If the Court opens this procedure, then immediately creditors and also third persons interested can file a petition proposing to the creditors a "concordato fallimentare", that is offering to the creditors a payment on percentage of their claims in exchange of all the debtor's assets. So the debtor should be incentivized to propose to the creditors the "concordato preventivo" to avoid losing control of the enterprise.

The law does not require that the entrepreneur's previous conduct was fair, but he must present a turn-around plan providing for the restructuring of debt and payment to the creditors' payment grounded on a sincere exposition of the enterprise situation. It must be emphasized that the procedure doesn't necessarily require the rescue of the enterprise. The debtor may also provide only the settlement of its debts.

The plan's content is flexible. The debtor may provide for payment to creditors in all the ways he thinks profitable, also offering to the creditors stock options changing their debt capital into risk capital. Generally in this case, the assets are transferred to a different company; those shares will be assigned to the creditors.

Creditors may be divided in classes, according to the legal and economic nature of the debt; classes may then be given different treatment. It must be pointed out that it's not mandatory to create classes, and that secured creditors (in Italy there are more secured creditors than in U.S.) must be totally paid. Only when the secured creditors are unable to recover all their credit from the enterprise's proceeds may the debtor offer them a payment on percentage, not less than what they should receive in the event of liquidation.

The entrepreneur must always present an expert opinion on the feasibility of the plan. The expert's appointment is done by the debtor, but he must choose a person who has the requirements to be appointed as trustee (generally a lawyer or a public accountant).

In the first version of the law ,the Court didn't have the power to examine if the debtor's plan was well founded. The Court could only check if the procedure had been fulfilled according the law and if the classes were well formed respecting the priority and the nature of the debt. In the first few months of experience, this rule of law was interpreted in different ways by the Courts. Some Courts decided they had the power to control the feasibility of the plan, struggling against the clear different provision of the law. Many Courts decided that they had the power to control if the creditors had sufficient information about the feasibility of the plan and if the expert report provided correct information to creditors to vote. In 2007 the law was amended, reserving more power to the Court to inquire on the plan's feasibility, but the limits of this power are not well defined. But the opinion that the Court may control the plan's feasibility is prevailing in the jurisprudence.

The possibility for the judge to verify, before that the creditors are called to vote, if the plan is feasible or if the debtor proposal is, like we say in Italy, a book of dreams, is a very controversial topic. The Italian bankruptcy judge doesn't like to play the arbiter's role. He thinks that is dangerous to waste time calling the creditors to decide in cases when the debtor's proposal is not serious and is aimed to avoid the liquidation proceeding. According to the Italian system only when the liquidation proceeding is open, the public attorney will proceed for the bankruptcy crimes. This is a good reason for the debtor to retard the liquidation opening.

It must be pointed out that full Court control over the debtor's proposal is reserved by the law to the last phase of the procedure, after the creditors' vote, if dissenting creditors file a petition opposing approval of the debtor's proposal. To allow control in the procedure's first phase means, in my opinion, to maintain the bargaining between the Court and the debtor on the plan's content that was one of the deficiencies of the 1942 Act. The 2007 Act's provision that the Court may assign to the debtor a short term to modify the proposal is used to reaffirm the Court's power to discuss the plan's merit.

The judgment on the debtor's proposal is reserved to the creditors who vote on the plan. Only the unsecured creditors may vote. The secured creditors do not vote because their credits must be completely paid. They are admitted to vote only

when the guarantee is not sufficient and the debtor's proposal provides a percentage payment of the unsecured portion of the credit.

Some Courts are now expressing the advice that classifying claims should be mandatory for the debtor. This opinion doesn't find support in the law's provision that says that the debtor may form the classes, but it's suggested from many situations where the same treatment reserved to all unsecured creditors means to treat different situations in the same way.

The debtor's proposal must be approved by the simple majority of the creditors by value. If the proposal divides the creditors in classes, there must be the majority approval of each class and also the simple majority by value of all the creditors. A creditor of a dissenting class may file a petition asking to the Court to apply the cram down to determine whether his treatment is less favourable than he could obtain with the liquidation[1].

Automatic stay is provided after the petition's filing. The debtor is in possession, but the enterprise's administration is controlled by a judicial administrator ("commissario giudiziale") appointed by the Court. The primary duty of this administrator is to advise the creditors on the plan before their vote. So the creditors have to choose between two different opinions: the debtor's expert advice who certified the plan's feasibility and the judicial administrator report on the same plan.

After the favourable creditors' vote, the Court must approve the agreement. Creditors and also third persons who could be affected by the agreement may file a petition asking to the Court to reject it. As I observed before, the creditors of the dissenting classes may file a petition asking the Court to apply cram down to verify that their treatment will not be less than they could receive in case of liquidation. Only the creditors of dissenting classes may challenge in the Court the plan approved by the majority of the classes. This possibility is not accorded to the dissenting creditors of a class who voted for the plan or to the dissenting creditors when the classes are not formed by the debtor. Also this law's provision has been criticized by some Courts and it's probable that sooner or later the Constitutional Court will have to address this problem.

The law provides that the procedure may last not more than six months. The Court can prolong this term for sixty days.

Another relevant question raised by the bankruptcy law reform was to decide the destiny of the enterprise when the debtor's proposal had been rejected by the creditors or by the Court. For some of the Courts, the judge had the power to verify ex officio if there were the conditions to open a liquidation proceeding; for other Courts, the judge didn't have this power and had to wait that a creditor or

[1] The law uses the expression "what could be obtained looking to a concrete alternative solution". Generally the only alternative solution is the liquidation.

the public attorney filed a petition. The 2007 Act requires that the Court wait for the creditor's petition. In the Italian situation this could be a problem because the debtor will try to reach an agreement with the creditors or a part of the creditors outside the Court. The opening of the liquidation will be delayed. In the meantime the possibilities for the trustee to sell the enterprise on the market as a going concern may be reduced and also the avoidable transfers' actions damaged. Before the reform, these actions could avoid the debtor's transfers made in the year before the liquidation's opening. Now this period has been reduced to six months. If the liquidation's opening is delayed, the most part of the debtor's transfers will be outside of the six months and it will not be possible to recover the goods and payments made by the debtor that are prejudicial to creditors.

The most serious problem raised by the new procedure is that in the last three years, the period in which the reform's first part was in force, only a small number of petitions were filed to the Courts. There is an obvious explanation linked to the difficulty to deal with a new law and also with so many different opinions in the Courts. It is discouraging that a procedure that was designed as a restructuring tool, that requires detailed pre-planning, and that doesn't put emphasis on guilt/wrong doing of directors and officers has not been well received by practitioners. We must also consider who these practitioners are. The advisors, the administrators and trustees appointed by the Courts, also the Courts' judges are the same people who were accustomed to deal with the old law and they must change their mind. This is not easy and will require more time.

I must add that practitioners have observed that in this moment there isn't in Italy a financial market for enterprise restructuring. After the reform, some foreign investors have been interested in whether the possibility to make money by financing restructurings have increased. But it has been observed that in Italy it is still not possible to receive security on the enterprise's assets for new financing. There isn't in Italy a tool like the floating charge. Generally when the creditors are asked to finance the restructuring all the other types of securities are not possible, so it could be important to have the possibility to create something like a floating charge on the enterprise's assets. Otherwise the new financing must be supported by securities accorded from a third person.

In addition, the new "concordato preventivo" discipline has been criticized observing that the debtor doesn't have the power to terminate contracts not essential for the restructure enterprise. In the liquidation procedure (fallimento) the trustee has this power. The absence of this possibility, as is provided by Chapter 11, reduces the possibilities to restructure the enterprise. It's a serious limit to the efficiency of the new system.

It must be said that the agreement can be extended also to tax claims, but that the legislature established special rules providing that the debtor must pay a minimum percentage to the State. There is debate between Courts. Some judges decided that the percentage is only an internal limit to the Public Administration to sign the agreement; others think that if the percentage is not provided, the plan may not be

approved by the Court. This opinion strikes a serious blow to the principle of parity of treatment between creditors of the same rank.

2. The Reform introduced other procedures to settle the enterprise's crisis and to avoid liquidation. The Consensual Restructuring Agreement ("Accordi di ristrutturazione dei debiti") is only partially a judicial proceeding. The debtor must reach an agreement with creditors without the legal protections against enforcement of the creditors' claims, but when the Agreement is fulfilled the debtor may ask the Court to approve it. The only consequence of the Court's approval is to exempt the payments made according to the Agreement from the avoidable transfers' discipline.

Through the Agreement the debtor can offer different conditions to each creditor. He is not obliged to respect the creditors' classes and the parity of treatment principle.

The Consensual Restructuring Agreement must be approved by not less than 60% by value of claims. The debtor must present an expert opinion on ability to pay the remaining claims when due, on the terms provided by the original contract. These claims are not affected by the Agreement. For this reason the creditors who did not approve the Agreement may challenge before the Court by requiring verification that their claims may be normally paid. Only if this condition is accomplished may the Court grant the exemption from the avoidable transfer's discipline.

The law says that the Consensual Restructuring Agreement is enforceable when it is published in the Register of Companies, before the Court's approval. So the Agreement should remain enforceable for those creditors who gave their approval even if the Court rejects it, thereby not granting the avoidable transfer discipline exemption. For this reason, creditors will probably sign the Agreement only conditioned on the Court's approval.

This part of the Reform is in force from 2006 and in this period the number of Agreements fulfilled is very small, although in the last months it has been increasing. The main reason is the lack of rules about the treatment of taxes in the Agreement. The 2007 Act tried to implement the new procedure providing an automatic stay of sixty days to help to fulfil the Agreement. This is a break in the original concept of the new procedure. The idea was to give to the debtor the possibility to reach an agreement with a part only of the creditors, outside the Court, provided that he was able to pay the other creditors according to the contract law. And the Court's role was only to verify that the agreement was real and with the creditor's majority and to decide the opposition of the creditors not affected by the agreement. These creditors not affected had the right to be paid on their original terms, not after. The stay will affect these creditors who will not receive any benefit from the Agreement.

The stay is provided after the Agreement has been published in the Companies

Register. It has been observed that at that time the debtor must already have the agreement of the sixty per cent of creditors, so probably the stay could help to fulfil the agreement, but not so much as it had been provided when the debtor begins to contact the creditors. But it's true that at that time the debtor will prefer to maintain the secret on the content of his discussion with the creditors until the agreement will be reached.

The 2007 Act and some recent amendments increased also the possibility to reach the Agreement with the State about tax claims. This is also progress. Many times the debtor when the crisis begins decides not to pay taxes. The public administration in Italy is very slow in recovering unpaid taxes, so it's possible not to pay hoping to have the time to restore the enterprise before having to deal with the Finance Ministry. So to include taxes among the credits which can be the object of the agreement is a good result.

3. Also the Turn Around Plan ("Piani attestati") is not a judicial procedure; it is a creditors' agreement founded on the consensual restructuring of the enterprise, without a moratorium provided by the law. The agreement may provide the enterprise reorganization or also the liquidation and the insolvency or crisis settlement.
Also in this case if the debtor provides an expert opinion on "reasonableness" of the plan, the law accords the exemption from the claw back of payments made if bankruptcy is declared.
An expert is appointed by the debtor. In the first version of the law the appointment was to be done by the Court when the debtor was a corporation or was quoted in the stock exchange market. Now the 2007 Act provides that the expert is always appointed by the debtor[2]. According to some financial advisors, many banks would prefer that the expert should be appointed by the judge and not by the debtor.

After three years of force of the law it's difficult to understand if the Turn Around Plan is working well. It's reached in a very private way and generally the entrepreneur doesn't like to inform the public of such agreement. Bank experts think that there is a serious number of Turn Around Plans between debtors and banks, but at the moment there isn't a good research on this subject to verify if this part of the law is working. The inquiry is difficult also because it is too early to have bankruptcies declared after the failing of a Turn Around Plan and avoidable transfers' actions challenged by the trustee against creditors paid in the plan's execution.

One of the questions posed by scholars after approval of the reform was: why have two different procedures, the Consensual Restructuring Agreement and the Turn Around Plan, founded on the creditors' agreement and granting only the same exemption from the avoidable transfer discipline? It's clear the reason of the debtor's choice between the "concordato preventivo" and the other two

[2] This is the most reasonable reading of the new Act.

procedures. The first is public, under the Court's control, and is obliged to respect the parity of creditors' claims or the formation of classes, but grants to the debtor the automatic stay and, if approved by the creditors' majority is binding for all creditors. Both the Consensual Restructuring Agreement and the Turn Around Plan are private. There isn't an automatic stay or it's granted only for a short period of time. The creditors' treatment may be different, even for secured creditors. So why two different procedures? Why should the debtor choose the Consensual Restructuring Agreement when he can profit of the total privacy of the Turn Around Plan?

The answer could be that really the first procedure is not convenient and this could be the reason explaining why until now the number of these procedures was so limited. But I prefer to think that the failure of the Consensual Restructuring Agreement depends from the lack of tax measures. At this moment there isn't in our law a provision telling that the amount of credits renounced by the creditors must not be taxed as capital gain as it's established for the "concordato preventivo".
This failure will be probably corrected in the future. So why two different procedures with more or less the same content?

In my opinion the Consensual Restructuring Agreement needs to deal with more formalities, but permits to the debtor and to creditors to be sure of the avoidable transfer exemption through the Court's control on the agreement content and the plan's feasibility. The Court's approval and also the agreement's publication on the Companies Register may convince creditors that the debtor must act fairly, and may contribute to the proposal's success.

The Turn Around Plan is a completely private agreement. The Court's control will be remote and only in the case of default. The Plan must be executed with the expert's opinion to be kept in a drawer and taken out only if bankruptcy will be declared. This is a good solution when the creditors' number is limited and privacy is really important. In this way the debtor can reach the agreement with few creditors, generally the banks and avoid rumours in the public on the crisis. But creditors will know if there were really the conditions to be exempted from the avoidable transfers' actions only when challenged before the Court by the trustee.

4. The bankruptcy procedure is not the only procedure provided by the law for insolvency cases. For the biggest enterprises, like in the Parmalat case, the law provides for extraordinary administration. This procedure has not been changed by the reform, but some amendments were introduced to deal with the Alitalia case. I will limit this exposure to a general overview.

There are two different types of extraordinary administration, ruled by the Acts of 1999 (the Act 270/1999) and of 2003 (the Act 347/2003). In both cases, the Court has limited powers and the procedure is administered by an extraordinary administrator appointed by the Government.

In the first proceeding, the Court may open the procedure on demand by the debtor or by the creditors, when the enterprise is insolvent and when there are at least 200 employees and the indebtedness is at least equal to 2/3 of the assets and to 2/3 of turnover. In the second case, the procedure (extraordinary restructuring) is opened by the Industry Ministry (the correct name is Productive Activities Ministry) on demand of the debtor. The Court has the power to stop the proceeding if insolvency does not exist. The requirements are at least 500 employees and indebtedness not less than 300 million euros.

The object of an extraordinary administration (the first procedure) is either a restructuring plan or a plan for assets' disposal as a going concern. The object of the extraordinary restructuring is only restructuring. In this case, it is also possible to have a compromise with creditors providing for the division of creditors in classes and cram down. In the Parmalat case, the extraordinary administrator proposed a creditor's agreement assuring the assets' transfer to a new company whose stocks were distributed to the creditors in payment of their claims.

In an extraordinary administration, an insolvency compromise with creditors is also available. An important difference between the two procedures is that in the extraordinary administration the claw back actions are available only in the plan for disposal of assets as a going concern; in the extraordinary restructuring, the claw back actions are always available, including if the enterprise goes on with the restructuring plan. But the Constitutional Court, reviewing a decision by the Parma Court in the Parmalat case, decided recently that claw back actions may go on only if the result is reserved to satisfy creditors and not for an enterprise restructuring. The reason of this different discipline and of the Constitutional Court's decision was that avoidable transfer actions should be reserved to restore the creditors' rights against the debtor's assets in the event of bankruptcy. When assets are sold through the extraordinary administration the enterprise can go on, but the selling is done in the creditors' interest. When restructuring is provided, the avoidable transfers' result could be used not to pay creditors, but to finance the enterprise's activity. This is not the scope of the avoidable transfers' actions. Furthermore the European Union treaty prohibits measures which could affect competition between enterprises. If the proceeds of avoidable transfers are used to finance the enterprise's activity, there could be an infringement of the competition law. So the 1999 extraordinary administration Act prohibited the avoidable transfers actions if the assets are not sold and the extraordinary administrator is trying to restructure the enterprise. But the 2003 Act provided differently allowing the avoidable transfers actions in any case. The Constitutional Court decided that also in this case the avoidable transfers proceeds should be reserved to creditors and not used to finance the restructuring.

In both extraordinary administration types the Court plays a limited role. The judge decides on the validity of claims and avoidable transfer actions, but the direction of the procedure is reserved to the extraordinary administrator and to the Ministry. That doesn't mean that there isn't any possibility to challenge in the

Court the decisions done by the extraordinary administrator or by the Ministry, but the competence is of a different Court, the administrative Court as in all the situations where a public authority decision is contested.

Extraordinary administration is possible only when the enterprise's restructuring or the enterprise's sell as a going concern is viable. The law provides than when it's clear that the restructuring or the selling are not possible, the procedure must be transformed in bankruptcy. So the legislature tried to prevent the procedure from continuing as it did under the 1979 extraordinary administration Act when, as matter of fact, all assets were sold not to pay the creditors, but to prosecute the activity only to save the workers' jobs.

To avoid the opening of the procedure when the enterprise's rescue is not possible, the 1999 Act provides that the Court must appoint a trustee for an observation period to decide at the end if there are the conditions for a profitable restructuring or selling of assets as going concern. In the Parmalat case it was immediately clear that it was necessary to take immediate decisions and do very difficult choices. The observation period was not compatible with this issue. So the 2003 law was enacted. It was the source of the second type of proceeding, completed with the amendments to the 2003 Act.

As I observed above the two extraordinary administration procedures have different requirements. Although both extraordinary administration procedures are reserved to the biggest enterprises, the 2007 Act requires a larger enterprise than the 1999 Act. For the others there are only the procedures founded on the creditors' agreement and the liquidation. So the discipline of an enterprise's insolvency in Italy is different according to the dimensions of the debtor. For the smallest enterprises, the insolvency procedure is not allowed. For the little and middle enterprises the procedure provided by the law is bankruptcy, a liquidation procedure whose topics were affected by the Reform. For the biggest enterprises, the insolvency is settled through the Government intervention, with a limited power reserved to the Court. Of course all enterprises, also the biggest, may access to the three procedures founded on the creditors' agreement.

Scholars don't agree with the legislature's choices. They think that extraordinary administration has no reason to exist, but politicians don't think so. In their opinion when the enterprise's dimensions are big and the insolvency affects the national economy, it's important that the procedure's control is reserved to the Government and not to the judge. To give complete information it must be added than since 1942 the bankruptcy law provided a special procedure, the administrative liquidation, reserved to some types of enterprises (i.e. insurance companies, cooperative companies). In this procedure was appointed a liquidator by the competent Ministry and the direction was held by the Ministry. Also in this case the liquidator could be challenged before the Court only for the claims recognition and the avoidable transfers actions or before the administrative Court to contest the decisions of the procedure's organs. A special administrative procedure, not too different, is provided also for the banks' insolvency.

We can say that when the public interest is involved the procedure's direction is held by the Government and not by the Court. In my opinion the most part of these special procedures are not reasonable. When the crisis is too big to be managed by the Court it can be understood that there are special rules, as in the Parmalat or Alitalia case, but generally there are not good reason to avoid the normal path.

So in the future, one of the main tasks to be accomplished in a hypothetical fourth Act of the Reform should be to revise the discipline of extraordinary administration, either to abolish it or to reduce the number of exceptions to the general discipline.

5. There are other topics to discuss in a possible next reform of the discipline. As I wrote above, the reform was done with different Acts in a haphazard way. So some parts of the reform were not well done and there are some failures in the discipline.

I observed before that no insolvency procedure is provided for the smaller enterprises, for consumers' debts and generally for civil debtors. This gap wasn't important when the 1942 Act was enacted. People were happy not to have to deal with bankruptcy and the stigma. But now stigma doesn't exist anymore. The insolvency proceeding permits the fresh start to the debtor and consumer debt needs an answer. The discharge cannot be limited to the commercial entrepreneurs.

Also the Courts should be free from the excessive number of petitions for decisions' enforcement filed by single creditors.

The second field where the reform didn't provide is the discipline of companies' groups. It's necessary to establish rules to bring all the companies of a group under the jurisdiction of the same Court and to appoint the same trustee. There are different assets and liabilities, but in most part of the situations there is only one enterprise or the different activities are linked together. So by having common rules and a common program, creditors can be satisfied the best. Also the enterprise's rescue needs an overview on the entire group.

In Italy only in the extraordinary administration such rules are provided. There isn't a good reason not to extent this discipline also to the other insolvency procedures. I know that generally in the European countries the insolvency groups' discipline is not well developed and this topic is now studied by Uncitral, but this is not a good reason not to do better when we can.

There is still the necessity to reform the bankruptcy crimes law. For this part the old 1942 Act is still in force. The values affirmed by the 1942 law were quite different from the values of the contemporary legislature. So there is the risk that in some cases the behaviours prosecuted by the law are still linked with the stigma

provided by the old law. Also the necessity that the debtor explain fairly the enterprise's situation when he propose an agreement to the creditors must be protected by the criminal law better than it does now. Of course these are only examples: all the criminal bankruptcy law must be revised.

And then there is also the international insolvency law. Italy is a member of the European Community. So the cross border insolvencies are directed by the 1346/2000 European Regulation. It could be useful to provide some rules coordinating the European and the internal insolvency law. Primarily Italy could apply the Model Law to the insolvencies where the C.O.M.I. is in a non European country, recognising the competence of the foreign judge as U.S. did with the Chapter 15.

There is a great legislative work to do. We hope that it will be possible to reach this goal in the near future.

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