

Country Reports

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Updates from Italy and Czech Republic



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Italy: New Provisions For Banks In Difficulties

On 3 May 2016, the Decree Law no. 59/2016 containing “Urgent measures on enforcement and bankruptcy proceedings, in favour of investors in banks in liquidation” was published in the Official Gazette.

The Decree Law no. 59/2016 is intended to reduce the duration of the insolvency proceedings and to speed up the payment of creditors. These amendments concern both the bankruptcy and the court preventive agreement, as well as the various steps of the procedures and the various parties involved.

One of the most important and significant innovations of the Decree concerns the establishment of the creditors’ committee, since the new paragraph of Article 40 of the Bankruptcy Law states, first of all, that the creditors’ committee is appointed from the date of acceptance of its members, also by electronic means, without the need of convocation before the receiver and even before the appointment of its President. The intent of the amendment is probably to avoid the danger that the creditors’ committee is inactive for a long period due to the inactivity of the receiver in its convocation.

Article 3 of the Decree Law no. 59/2016 requires the establishment, at the Ministry of Justice, of an electronic register of the insolvency proceedings and crisis management tools.

All information and

documents related to the bankruptcy proceedings, court preventive agreement, administrative compulsory liquidation referred to in Royal Decree 16 March 1942 no. 267 shall be published in this register, consisting of two sections: a public and free-access section and a restricted area.

Another new provision concerns the phase of verification of the bankruptcy claims and the formation of the bankruptcy liabilities. In fact, this step of the procedure, especially in large bankruptcy proceedings, requires several hearings which inevitably delay the allocation of the assets. The Decree Law 59/2016, amending Article 95 of the Bankruptcy Law, states that the hearing can also be held online, provided that the principle of an adversarial process and the effective participation of creditors is guaranteed.

As mentioned above, the Decree Law has introduced novelties, also regarding the court preventive agreement. In order to speed up and simplify the insolvency proceedings, a provision allowing online hearings has been introduced with the purpose of preventing that several hearings may delay the approval and therefore the execution of the agreement.

In order to facilitate the recovery or the sale of the receivables of the bankrupt estate, a strengthening of the investigative powers of the receiver has been established. Article 5 of Decree Law no. 59/2016, offers in fact the receiver the possibility to access databases containing financial information about the subject

against whom the procedure has a credit, even in the absence of an enforceable title, but after the authorisation from the Bankruptcy Judge.

As an extension of the receiver’s duties, article 6 of Decree Law no. 59/2016 introduces, at article 4-ter of the Bankruptcy Law, a specific cause for revocation of the receiver who does not proceed to the distribution of assets every four months when liquid sums are available.

The aim of the latter provision is to reduce the time frame of payment of the other creditors by severely punishing, with revocation, the receiver who fails to comply to the Law.

