On February the 14th 2019, The Crisis and Insolvency Code was published in the Official Journal and will enter into force on August the 15th 2020, except for some Italian Civil Code dispositions, which are already effective from 16 March 2019.

Early emergence of the crisis, restructuring in business continuity, simplification and unification of procedures are the reform core principles.

The judicial liquidation as the last solution and the definition of crisis state
Following the approval of the Crisis and Insolvency Code ("the Code") on January the 10th, we briefly described the main innovations approved by the reform.

Please find below an analysis of the most relevant aspects according to the economic and financial markets, we usually deal with.

To start, the reform modified in an organic way the previous legislation from a systematic point of view, by firstly regulating the restructuring procedures and, only at least, the bankruptcy proceeding, now called judicial liquidation.

This review immediately highlights the legislator aim, namely the conservation of the going concern by the restructuring procedure along with the business continuity. Consequently, the judicial liquidation is the last legal tool to use.

Before just defined by Scholars and Courts, now the Crisis State is expressly defined as "the situation of economic and financial difficulty, which makes probable the debtor insolvency, and that for business is manifested as inadequacy of cash flows to cope with the obligations regularly planned". On the contrary, the Insolvency State definition is unchanged and is "the debtor situation which arises with debts and other external aspects, that make evidence the debtor is not able to fulfil his obligations".

Thanks to these definitions, it is crystal clear that the crisis state is a pre-insolvency reversible situation on prospected bases that can allow a restructing procedure, preserving the business continuity.

The early - warning tools and the new company directors and statutory auditor duties
As provided in France, the Code foresees the Early - Warning Tools, including:

> reporting obligations about warning signs imposed on specialized subject as Company's Board of Auditors and Public Qualified Creditors;
> new organizational duties for the entrepreneur.

Earnings, patrimonial or financial imbalances, in accordance with the features of the company and the business activity, are all warning signs, measurable through specific indicators, periodically developed by the National Council of Chartered Accountants and by The Council of Professional Accountants.

Reports must be directed to a new competent crisis assisted composition organism at the Commerce Chamber where a confidential assisted composition is carried out to point out possible remedial measures; the assisted composition can be set up only on debtor request to easily settle the crises. This latter composition has been introduced in addition to the restructuring proceedings provided by
our legal system.

Company directors shall constantly evaluate the fairness of the corporate assets, the financial balance and the foreseeable management course; moreover, they must take suitable initiatives in case of reports by the board of statutory auditors or by the external auditors.

Banks and financial intermediaries are bound by these reporting duties too, precisely in case of considerable variations, revisions or credit lines revocations. Moreover, the same legal duties are provided for some qualified creditors, such as the Tax Agency, when an excessive debt exposure is verified.

Concurrently with these just mentioned new reporting and organizational legal duties, the Code makes few changes to the Italian Civil Code dispositions on the company management.

The entrepreneur working in a Company or, nevertheless, collectively, shall establish an organisational, administrative and accounting structure adapted to the nature and dimensions of the Company, also to promptly identify crisis. Furthermore, he must act without any delay for the adoption and the execution of the legal tools provided to overcome the crisis and the business continuity by the Code.

As said above, the several changes made to the Civil Code have entered into force since 16 March 2019.

The unitary proceeding
For streaming and acceleration requirements, the legislator unified the way for access to all the procedures through a unitarian way to proceed, activated by the debtor in relation to any restructurings.

The certified reorganization plans
Until now only provided between the exemptions from the bankruptcy claw-back, the certified reorganization plan is specifically regulated by the article 56 of the Code.

These plans are defined as agreements addressed to creditors and should be adequate for the recovery of debt exposure and the insurance of the financing balance. In addition, they must be surely dated, must include the crisis reasons and the intervention strategies, plus the time needed to ensure the re-balance of the financial structure and the alternative tools to adopt in case of variations.

The plans shall be certified by an independent expert with the same qualification requirements provided by the previous legislation and recorded in a specific register for crisis and insolvency managers, set up in the Ministry of Justice. The certification must concern not only the veracity of the company data and the economic plan viability but also the legal feasibility.

The activities, payments and the security given for the execution of the certified plan are exempt from bankruptcy and ordinary claw back, unless the assessment of the independent expert or debtor wilful act or serious negligence, in case of the creditor awareness at the time of the performance, payment or security establishment.

The debt restructuring agreements
The debt restructuring agreements discipline is unchanged, both considering the participant creditors percentage (corresponding to the 60%) and the payment duties to the non-adherent.

In accordance with an express disposition, the agreement (attested by an independent expert for its viability) must be accompanied by a restructuring plan. If changes occur before the document approval, the attestation shall be renewed, and the creditors consent regained. The attestation renewal is also required in case of substantial modifications after the document approval.

The agreement can be reached also -

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2 The crisis management procedures are the reorganization plan, the restructuring agreement and the composition with creditors.

3 The agreement must guarantee the payment of non-adherent creditors in the following terms:

a) within one hundred and twenty days of approval, in the case of claims already expired on that date;

b) within one hundred and twenty days from expiry, in the case of claims not yet expired on the date of approval.
and this is a relevant change - with creditors representing only the 30% if the debtor does not propose the deferred payment to the non-adherent creditors and does not ask for protection measures relating.

Finally, it is still possible the extension of the agreements to the non-adherent creditors, and - as an important new element - in case of not liquidation agreement, the effects can be extended to all creditors and not only to banks or financial intermediate. The same possibility is foreseen for the moratorium convention.

**The composition with creditors**
The composition with creditors is mainly renewed regarding the purpose; in fact, the agreement can be carried out both through the direct and indirect business continuity, meaning that the debtor obtains assets to satisfy creditors claim thanks to the business activity. Moreover, a legal duty to maintenance or rehire a certain percentage of workers is foreseen regarding the indirect agreement.

Therefore, any proposal to creditors of a composition through a liquidation would become a residual arrangement and for its implementation, external resources are needed.

The composition with creditors main features are:

> access to the procedure both for debtor in an insolvency and in a crisis state;

> voting right limited to the loss suffered (determinate through specific criteria provided by the Civil Code) in favour of secured creditors who accepted the proposal of moratorium payment;

> accompaniment of the agreed plan with the certification by an independent expert;

> competing proposals of agreement may be presented by third creditors;

> competing offers may be presented by third interested in the procedure; even though the competitive procedure opening is now subject to the transposition of the interest expressions by third subjects. The reform has provided the possibility to present a competing offer also in case the debtor concluded a contract (before the procedure opening) for the non-immediate company transfer or part of it;

> goods management remains on the debtor availability under the Judicial Commissioner supervision; the debtor can activate extraordinary administration operations useful to better satisfy creditors, even before the approval;

> fulfilment of pre-deductible credits at the expiring time provided by the law or the contract.

**Pre-deductible financing, payment of previous loans and exemption from claw-back actions**
When the business continuity is foreseen, there is still the chance to apply for pre-deductible financing before the composition with creditors or the debt restructuring agreement approval, including the request for issuance of guarantees, functional to the business continuity and to the best satisfaction of extended the effects of the agreement may be satisfied based on the agreement than the judicial liquidation;

In addition to the ordinary advertising obligations, the debtor has notified the agreement, the application for approval and the documents annexed by the creditors to whom he requests to extend the effects of the agreement.

5The Moratorium Convention is an agreement with creditors concerning the deferral of deadlines for claims, the waiver or suspension of executive and precautionary actions and any other measure which does not result in a waiver of credit and is also effective against non-adherent creditors who belong to the same class.

6Arrangement introduced with the 2015 reform.

7Idem
creditors.

The chance to apply for the maintenance of the self-sustaining credit lines existing at the time of the admission of the request for a preventive arrangement or of the approval of the debt restructuring agreement is hereby confirmed.

**The debtor must specify the destination of the financing, the impossibility of finding them otherwise and the reasons why the absence of such funding would cause serious prejudice**

Only in case of business continuity is provided the possibility of contracting priority loans in the execution of the composition with creditors or the debt restructuring agreements, as well as the possibility of requesting authorisation to pay the previous credits related to essential services for the continuation of business activity and to the best satisfaction of creditors.

The pre-deductibility of these loans will lapse if thereafter the false data or fraudulent conduct of the debtor and the knowledge of such circumstances by the parties who disbursed the financing are established.

It is also confirmed that these loans, guarantees and payments made are exempt from bankruptcy in the event of the subsequent opening of the judicial liquidation procedure and this exemption is expressly extended also to the ordinary claw back.

**Group’s restructuring**

For the first time, the Code specifically regulates the Group’s restructuring, providing the possibility to submit to creditors a single restructuring plan for the whole group of companies and, in case of restructuring arrangements and composition with creditors, to file a single petition for companies belonging to the same group.

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The above overview has no claim to exhaustiveness, but we hope it will be useful to provide a first overall picture of the procedures of the Code. In the months to come we remain at your disposal to deepen and further analyse the new legislation, as well as to assess the most appropriate modalities and conduct to be adopted for a prompt emergence of the crisis and subsequent management in accordance with the new law.