

New Code of Corporate Crisis and Insolvency

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1. Entry into force of the New Code of Corporate Crisis and Insolvency (“CCCI”)

New CCCI has entered into force on 15 July 2022 and unifies under a single code the regulation of crisis and insolvency of every kind of debtor, with the sole exception of large companies subject to extraordinary administration procedure and entities active in specific regulated industry (e.g. banks, financial intermediaries). Moreover, CCCI implements in Italy the principles laid down by Insolvency Directive, whose purpose is to introduce, throughout the European Union, a common legal framework for restructuring, with the aim of enhancing the homogeneity of the European national systems in a crucial area for the economic stability of the EU market.

Entry into force of the New Corporate Crisis Code



New CCCI will apply only to procedures commenced following to its entry into force (15 July 2022). Procedures commenced beforehand and already pending as of such date, or resulting therefrom shall remain subject to the previous regulation (legge fallimentare).

2. Five Main innovations



- 1 A new definition of **crisis**, as the condition where debtor's prospective cash flows fails to meet the obligations falling due over the following **twelve-months** period;
- 2 Introduction of a more analytical discipline of warning-tools that the entrepreneur (also individual) must implement, in order to promptly detect the crisis at an early stage, together with the provision of specific reporting obligations for so-called public creditors (Agenzia delle Entrate, INPS and INAIL) and banks, in presence of certain warnings or changes in credit facilities

Reorganization of pre-insolvency and winding-up tools (**WURT**), the definition thereof includes, in addition to the alike instruments already provided for by the previous Bankruptcy Law (reorganisation plans, restructuring agreements and moratorium), also the new restructuring plan subject to homologation (**PRO**), which introduces an hybrid instrument between restructuring agreements and composition with creditors (**concordato preventivo**). With regard to concordato preventivo, it needs to be flagged the novelty represented by the possibility - where the plan is with business continuity - to waive the *absolute priority rule* (**APR**), in favour of the more flexible *relative priority rule* (**RPR**). CCCI also incorporates negotiated composition (**composizione negoziata**), the new procedure aimed at early detecting the crisis, introduced by the Law Decree No. 118 of 24 August 2021 and entered into force earlier than the CCII.
- 3
- 4 Introduction of the unitary procedure for access to WURT, which also includes the discipline (also unitary) of the precautionary and protective measures, the maximum duration thereof may not exceed, in total, **twelve months**;
- 5 Finally, an important novelty, from a systematic standpoint, concerns the enhancement of discharge of debts (**esdebitazione**), which is extended to legal persons.

3. Pre-insolvency restructuring tools



3.1 Overview table about the restructuring tools

Name of the tool	Position in the CCCI	Objective entry requirements	Subjective entry requirements
Agreement with the expert and the creditors following a negotiated composition, with protection against claw-back actions and criminal liabilities, pursuant to Articles 166(3)(d) and 324 of CCCI	Art. 23, (1), lett. c)	Likelihood of crisis or insolvency	Commercial and agricultural entrepreneur (including small entrepreneurs)
Restructuring agreements	Art. 57	Crisis or insolvency	Any entrepreneur, different from the small entrepreneur
Restructuring agreement with extended effects	Art. 61	Crisis or insolvency. The relevant plan shall be with business continuity. A plan with liquidation purposes is also allowed provided that (at least) half of entrepreneur's total indebtedness is towards banks and financial intermediaries and the relevant categories are formed among them	Any entrepreneur, different from the small entrepreneur

Name of the tool	Position in the CCCI	Objective entry requirement	Subjective entry requirement
Facilitated restructuring agreement	Art. 60	Crisis or insolvency. It is also necessary that the debtor: (a) does not ask for the moratorium of the external creditors' claims; (b) has not applied for temporary protective measures	Any entrepreneur, different from the small entrepreneur
Negotiated composition	From Art. 12 to Art. 25-undecies	Likelihood of crisis or insolvency	Any entrepreneur, including small entrepreneur
Composition with creditors for small businesses (<i>concordato minore</i>)	From Art. 74 to Art. 83	Over-indebtedness	Professional, small entrepreneurs, agricultural entrepreneur, innovative start-up, any other debtor (however excluding the Consumer) not subject to judicial liquidation, or administrative compulsory liquidation or other liquidation proceedings provided by the Civil Code or special laws for crisis or insolvency regulation
Concordato in the judicial liquidation	From Art. 240 to Art. 253	Pending judicial liquidation proceedings	Commercial entrepreneur, with exclusion of small entrepreneur

Name of the tool	Position in the CCCI	Objective entry requirements	Subjective entry requirements
Composition with creditors (Concordato Preventivo)	From Art. 84 to Art. 120-quinquies	Crisis or insolvency	Commercial entrepreneur, with exclusion of small entrepreneur
Simplified concordato with liquidation of the assets (following the negotiated composition)	Art. 25-sexies and septies	Only applicable following a negotiated composition and provided that the expert has declared, in its final report that (i) the negotiations were carried out in good faith, but (ii) no viable agreement was achieved. The relevant application must be filed within 60 days after the unsuccessful conclusion of the Negotiated composition.	Any entrepreneur, including small entrepreneur
Agreement with rewarding effects (following the negotiated composition)	Art. 23, (1), lett. a)	Only applicable following a negotiated composition. It is also necessary that, according to the expert's report, the agreement ensures the business continuity for the following two years.	Any entrepreneur, including small entrepreneur

Name of the tool	Position in the CCCI	Objective entry requirements	Subjective entry requirements
Moratorium	Art. 62	Crisis	Any entrepreneur
Controlled liquidation	From Art. 268 to Art. 277	Over-indebtedness	Consumer, professional, small entrepreneur, agricultural entrepreneur, innovative start-up, any other debtor not subject to judicial liquidation, or administrative compulsory liquidation or other liquidation proceedings provided by the Civil Code or special laws for crisis or insolvency regulation
Judicial liquidation	From Art. 121 to 239	Insolvency	Commercial entrepreneur, with exclusion of small entrepreneur
Recovery plan	Art. 56	Crisis or insolvency	Any entrepreneur
Restructuring plan subject to homologation (PRO)	Art. 64-bis	Crisis or insolvency	Commercial entrepreneur, with exclusion of small entrepreneur
Restructuring plan for consumers	Art. 67	Over-indebtedness	Consumer
Settlement of tax and social security liabilities in restructuring agreements	Art. 63	The settlement is applicable only in connection with a restructuring agreement	Any entrepreneur, different from the small entrepreneur
Settlement of tax and social security liabilities in composition with creditors (concordato preventivo)	Art. 88	The settlement is applicable only in connection with a composition with creditors	Commercial entrepreneur, with exclusion of small entrepreneur

3.2 Negotiated composition (Art. 12 ff)



Subjective entry requirements	Any entrepreneur, including small entrepreneur
Objective entry requirements	Likelihood of crisis or insolvency
Events of exclusion	Having filed another application for negotiated composition in the previous year (reducible to four months) and/or existence of a pending reorganisation WURT (or renounce to a reorganisation WURT made in the previous four months)
Main features	Consensual, Court's involvement is not required but may occur if debtor apply for protective or precautionary measures or to be authorized to carry out extraordinary transactions (such super-priority financing or business' disposal)
Notification to Public Prosecutor	No, except in case of Court's involvement
Appointment of Judicial Commissioner	No, however the procedure entails the appointment of an expert to ease the negotiation between the parties
Debtor in possession	Yes, but the expert may oppose to transactions inconsistent with the negotiation or affecting creditors' rights
Protective measures	Yes, subject to Court's confirmation
Super-priority financing	Yes, subject to Court's authorization
Protection for extraordinary transactions	Yes, subject to Court's authorization
Ineffectiveness of ipso facto clauses	Yes
Duration	180 days plus maximum additional 180 days

3.3 Simplified concordato with the liquidation of the asset (Artt. 25 – sexies ff)



Subjective entry requirements	Any entrepreneur, including small entrepreneur
Objective entry requirements	Only applicable following a negotiated composition and provided that the expert has declared, in its final report that (i) the negotiations were carried out in good faith, but (ii) no viable agreement was achieved. The relevant application must be filed within 60 days after the unsuccessful conclusion of the Negotiated composition.
Events of exclusion	Debtor having acted in bad faith during the former negotiated composition
Main features	Compulsory, Court's involvement, creditors are not required to vote but dissenting creditors may file opposition, cram-down of dissenting creditors subject to "no creditor worse off" test
Notification to Public Prosecutor	Yes
Appointment of Judicial Commissioner	No, however the procedure entails the appointment of a judicial clerk (ausiliario) and a liquidator
Debtor in possession	Yes, except for liquidation activities that shall be carried out by the liquidator appointed by the Court
Protective measures	Applicable
Super-priority financing	Not applicable
Protection for extraordinary transactions	Yes, if relevant transactions are consistent with the liquidation plan
Ineffectiveness of ipso facto clauses	Not applicable

3.4 Recovery plans (Art. 56)



Subjective entry requirements	Any entrepreneur
Objective entry requirements	Crisis or insolvency
Main features	Consensual
Notification to Public Prosecutor	Not applicable
Appointment of Judicial Commissioner	Not applicable
debtor in possession	Yes
Protective measures	Not applicable
Super-priority financing	Not applicable
Exemption from claw-back actions and bankruptcy offences	Yes, provided that they are consistent with the recovery plan
Ineffectiveness of ipso facto clauses	Not applicable

3.5 Restructuring agreements, facilitated restructuring agreements and restructuring agreements with extended effects (Art. 57, 60 and 61)



Subjective entry requirements	Any entrepreneur, different from the small entrepreneur
Objective entry requirements	Crisis or insolvency, participation of 60% of creditors or 30% in facilitated restructuring agreements
Main features	Consensual, subject to Court's homologation, cram-down of dissenting creditors applicable in the restructuring agreements with extended effects (with 75% majority of the relevant class)
Notification to Public Prosecutor	Yes
Appointment of Judicial Commissioner	Possible
Debtor in possession	Yes
Protective measures	Applicable (except in case of facilitated restructuring agreement)
Super-priority financing	Applicable
Exemption from claw-back actions and bankruptcy offences	Yes, provided that the relevant transactions are consistent with the restructuring plan
Cram – down of tax and social security liability	Applicable
Ineffectiveness of ipso facto clauses	Applicable

3.6 Moratorium (Art. 62)



Subjective entry requirements	Any entrepreneur
Objective entry requirements	Crisis
Main features	Compulsory, creditors are not required to vote but dissenting creditors may file opposition with the Court, possibility of cram-down of dissenting creditors (with 75% majority of the relevant category) subject to “no creditor worse off” test
Notification to Public Prosecutor	Not applicable
Appointment of Judicial Commissioner	Not applicable
Debtor in possession	Yes
Protective measures	Not applicable, except for the effects related to the moratorium itself
Super-priority financing	Not applicable
Exemption from claw-back actions and bankruptcy offences	Not applicable
Ineffectiveness of ipso facto clauses	Not applicable, except for the effects related to the moratorium itself

3.7 Restructuring plan subject to homologation - PRO (Art. 64-bis)



Subjective entry requirements	Commercial entrepreneur, with exclusion of small entrepreneur
Objective entry requirements	Crisis or insolvency
Main features	Compulsory, Court's involvement is required, RPR applicable, creditors' vote required, approval subject to unanimity of classes with possibility of cram-down of dissenting creditors within the relevant class; cross-classes cram-down not applicable
Notification to Public Prosecutor	Yes
Appointment of Judicial Commissioner	Yes
Debtor in possession	Yes, with Judicial Commissioner supervision
Protective measures	Applicable
Super-priority financing	Yes
Exemption from claw-back actions and bankruptcy offences	Exemption from claw-back actions applicable for transactions consistent with the restructuring plan, not applicable exemption from bankruptcy offences (see Article 324)
Ineffectiveness of ipso facto clauses	Applicable

3.8 Composition with creditors (*concordato preventivo*) (artt. 46 ff and 84 and ff)



Subjective entry requirements	Commercial entrepreneur, with exclusion of small entrepreneur
Objective entry requirements	Crisis or insolvency
Main features	Compulsory, Court's involvement is required, RPR applicable in case of concordato with going concern, creditors' vote required, possibility of cram-down of dissenting creditors, cross-classes cram-down applicable, subject to no creditor worse off test. Liquidation plan requires third parties' contribution (additional to debtor's assets) and must offer to unsecured creditors a recovery not less than 20%
Notification to Public Prosecutor	Yes
Appointment of Judicial Commissioner	Yes
Debtor in possession	Yes, except for extraordinary transactions
Protective measures	Applicable
Super-priority financing	Yes
Exemption from claw-back actions and bankruptcy offences	Applicable for transactions consistent with the restructuring plan
Cram – down of tax and social security liability	Applicable
Ineffectiveness of ipso facto clauses	Applicable

4. Over - indebtedness restructuring tools



4.1 Restructuring plan for consumers (art. 67)

Subjective entry requirements	Consumer
Objective entry requirements	Over-indebtedness
Events of exclusion	Not eligible consumers that: <ul style="list-style-type: none">- have been already discharged (esdebitati) in the previous five years, or- have already benefited of discharge (esdebitazione) twice,- have determined their over-indebtedness by gross negligence, bad faith or fraud
Main features	Compulsory, Court's involvement required, creditors' vote is not required but dissenting creditors may file opposition, cram-down of dissenting creditors subject to "no creditor worse off" test
Notification to Public Prosecutor	Not applicable
Appointment of Judicial Commissioner	No, replaced by OCC
Debtor in possession	Yes
Protective measures	Applicable from the date of the opening decree, upon debtor's request
Super-priority financing	Not applicable
Exemption from claw-back actions and bankruptcy offences	Not applicable
Ineffectiveness of ipso facto clauses	Not applicable

4.2 Composition with creditors for small businesses (*concordato minore*) (art. 74)



Subjective entry requirements	Debtors not subject to judicial liquidation, administrative compulsory liquidation or other liquidation proceedings provided for in the Civil Code or other special laws; including: <ul style="list-style-type: none"> (i) professional; (ii) small entrepreneur; (iii) agricultural entrepreneur; (iv) innovative start-up Not applicable to consumers
Objective entry requirements	Over-indebtedness
Events of exclusion	Not eligible debtors that: <ul style="list-style-type: none"> - have been already discharged (esdebitati) in the previous five years, or - have already benefited of discharge (esdebitazione) twice, - committed fraud against creditors
Main features	Compulsory, Court's involvement is required, creditors' vote required (silent-assent rule), possibility of cram-down of dissenting creditors, cross-classes cram-down applicable.
Notification to Public Prosecutor	Liquidation plan requires material contribution by third parties (additional to debtor's assets) Not applicable
Appointment of Judicial Commissioner	Possible
Debtor in possession	Yes, except for extraordinary transactions
Protective measures	Applicable from the date of the opening decree, upon debtor's request
Super-priority financing	Not applicable
Cram - down of tax and social security liability	Applicable
Ineffectiveness of ipso facto clauses	Not expressly applicable; however, it should be deemed applicable when the plan is with going concern by analogy with composition with creditors (concordato preventivo)

4.3 Controlled liquidation (Art. 268)



Subjective entry requirements	Any debtor not subject to judicial liquidation, administrative compulsory liquidation or other liquidation proceedings provided for in the Civil Code or other special laws; specifically: professional, small entrepreneur, agricultural entrepreneur, innovative start-up, consumers. Entry petition may be filed also by creditors and – if debtor is an entrepreneur – by public prosecutor
Objective entry requirements	Over-indebtedness
Events of exclusion	Controlled liquidation is not applicable when the relevant request is filed by a creditor and: (i) the amount of the total overdue indebtedness is less than Euro 50,000; or (ii) OCC certifies that the debtor (natural person) owns no assets to be distributed among creditors.
Type of proceedings	Compulsory, Court's involvement is required, aimed at the liquidation of the assets and distribution of the relevant proceeds among creditors, according to APR
Notification to Public Prosecutor	Not applicable
Appointment of Judicial Commissioner	Not applicable, a liquidator is appointed by the Court
Debtor in possession	Not applicable
Protective measures	Judicial stay applicable from the date of the opening decree
Super-priority financing	Not expressly applicable; however, receivables arising out depending on liquidation's activities rank senior over other receivables (with the exception of those secured by mortgage or pledge)
Exemption from claw-back actions and bankruptcy offences	Not applicable, claw-back and damages actions are lodged and carried on by the liquidator
Ineffectiveness of ipso facto clauses	Executory contracts are suspended by virtue of the opening decree, liquidator may either carry on or terminate them

5. Judicial liquidation (artt. 121 ff)



Subjective entry requirements	Commercial entrepreneur, with exclusion of small entrepreneur
Objective entry requirements	Insolvency
Events of exclusion	Judicial liquidation is not applicable when total overdue indebtedness is less than Euro 30,000
Main features	Compulsory, Court's involvement is required, aimed at the liquidation of the assets and distribution of the relevant proceeds among creditors, according to APR
Notification to Public Prosecutor	Yes
Appointment of Judicial Commissioner	Not applicable, a bankruptcy receiver is appointed by the Court
Debtor in possession	Not applicable
Protective measures	Judicial stay applicable from the date of the opening decree to the end of the proceedings
Super-priority financing	Applicable, but generally conflicting with the purposes of the proceedings
Exemption from claw-back actions and bankruptcy offences	Not applicable, claw-back and damages actions are lodged or carried on by the bankruptcy receiver, the relevant declaration of insolvency triggers applicability of bankruptcy offences
Ineffectiveness of ipso facto clauses	Executory contracts are suspended by virtue of the opening decree, bankruptcy receiver may either carry on or terminate them. Ipso facto clauses related to the opening of judicial liquidation are ineffective

6. Discharge of debt (*esdebitazione*)



6.1 Discharge of debts in judicial liquidation and controlled liquidation proceedings (Art. 278 ff and 282)

Subjective entry requirements	Any kind of debtor, including individuals, companies and other legal persons
Objective entry requirements	<ul style="list-style-type: none">- debtor has been admitted to judicial liquidation or controlled liquidation and- There is a residual outstanding indebtedness towards creditors unsatisfied in such proceedings
Timing and procedure	<p>Debtor becomes eligible for discharge of debts (<i>esdebitazione</i>) when the first of the following events occurs:</p> <ul style="list-style-type: none">- 3 years elapsed from the commencement of judicial liquidation or controlled liquidation;- termination of the relevant judicial liquidation or controlled liquidation. <p>Discharge becomes effective upon Court's decree.</p>
Events of exclusion	<p>Debtor is not eligible when:</p> <ul style="list-style-type: none">(a) has been sentenced for criminal offences related to business management;(b) has misappropriated assets or misrepresented liabilities, or deepened insolvency;(c) has interfered with the ordinary course of the proceedings;(d) has been already discharged in the previous five years;(e) has been already discharged twice;(f) – only for controlled liquidation – has not caused its over-indebtedness with fraud or gross-negligence.

6.2 Discharge of debts for deficient over-indebted individuals (Art. 283)



Subjective entry requirements	Individual debtor (natural person) who incurred over-indebtedness without any fraud, wilful misconduct or gross negligence
Objective entry requirements	Debtor is not able to offer to his creditors any material recovery, neither currently nor prospectively
Timing and procedure	The relevant application shall be filed with the Court with the assistance of OCC
Events of exclusion	The benefit can be granted only once. Debtor must apply any new assets received in the following 4 years to repay its creditors, provided that such assets may grant a material recovery (not less than 10% of the overall outstanding indebtedness)

7. Protective and precautionary measures



The following table provides a synoptic framework regarding the application of protective and precautionary measures under CCCI.

With regard to the maximum duration of such measures, Article 8 of the CCCI lays down that the total duration of all measures granted under CCCI shall not exceed 12 months (see also Article 6(8), Insolvency Directive).

7.1 Overview table



Restructuring tool	Protective measures	Precautionary measures	Effects over pending judicial liquidation proceedings	Suspension of recapitalize-or-liquidate rule	Duration of protective measures
Negotiated composition	Prohibition for creditors to acquire pre-emptive rights and to start or carry on any enforcement or precautionary proceedings over debtor's assets and/or the goods or rights by which the business activity is carried on. Payments are not barred.	Aimed at ensuring the proper conclusion of negotiations, taking into account the status thereof and the protective measures already granted	From the day of the publication of the application for protective measures in the Company Register and until the conclusion of the negotiations (or dismissal of the negotiated composition), a judicial liquidation proceedings cannot be started	Applicable upon debtor's request and effective from publication in the Company Register until the conclusion of the negotiations (or dismissal of the negotiated composition)	Minimum 30 days and maximum 120 days, with possible extension up to maximum 240 days

Restructuring tool	Protective measures	Precautionary measures	Effects over pending judicial liquidation proceedings	Suspension of recapitalize-or-liquidate rule	Duration of protective measures
Restructuring agreement / Restructuring plan subject to homologation / Composition with creditors	<p>As of the publication of the relevant application in the Company Register by the debtor (including during negotiations) creditors are not allowed to start or carry on any enforcement or precautionary proceedings over debtor's assets or goods/rights by which the business activity is carried on.</p> <p>Statute of limitations periods are suspended and forfeitures do not occur. Such measures shall be confirmed by the Court within the following 30 days</p>	<p>Precautionary measures may be granted by the Court (including the appointment of a custodian of the business or debtor's assets), for the purpose of enacting, on an interim basis, the effects of the homologation decree</p>	<p>As of the publication of the relevant application in the Company Register, a judicial liquidation proceedings cannot be started</p>	<p>Applicable from the date of the application to access the tool, or to obtain protective measures, and until homologation</p>	<p>4 months, with possible extension provided that significant progress has been made in negotiations and there is no unfair prejudice to the rights of the other parties involved.</p> <p>The extension shall not exceed, in aggregate with any other protective measures, the maximum total duration of 12 months</p>

8. Ineffectiveness of contractual provisions (*ipso facto* and change of control clauses)

8.1 Overview table

Restructuring tool	Ineffectiveness of ipso facto provisions	Suspension of remedies	Ineffectiveness of change of control provisions
Negotiated Composition	Bank credit facilities cannot be revoked or suspended solely on account of the access to the negotiated composition proceedings, unless it is required according to prudential supervisory regime and the ground for the decision are explained in written by the bank	Creditors affected by protective measures are not allowed to unilaterally withhold performance of, terminate, accelerate or, in any other way, worsen debtor's rights under executory contracts, solely on account of non-payment of claims come into existence prior to the stay	Not applicable
Recovery plan	Not applicable	Not applicable	Not applicable

Restructuring tool	Ineffectiveness of ipso facto provisions	Suspension of remedies	Ineffectiveness of change of control provisions
<p>Restructuring agreements</p>	<p>In case of application for protective measures (also during the negotiations), creditors are not allowed to unilaterally withhold performance of, terminate, accelerate or, in any other way, worsen debtor's rights under executory contracts, solely on account of the filing of such application.</p> <p>Any different contractual provision shall be deemed ineffective.</p>	<p>Creditors affected by protective measures are not allowed to unilaterally withhold performance of, terminate, accelerate or, in any other way, worsen debtor's rights under essential executory contracts, solely on account of non-payment of claims come into existence prior to the stay</p>	<p>Changes in the shareholding interests structure resulting out of the implementation of a WURT shall not allow any contractual counterparty to terminate or modify any agreement entered into by the company.</p> <p>Any different contractual provision shall be deemed ineffective.</p>

Restructuring tool	Ineffectiveness of ipso facto provisions	Suspension of remedies	Ineffectiveness of change of control provisions
<p>Restructuring plan subject to homologation (PRO)</p>	<p>Creditors are not allowed to unilaterally withhold performance of, terminate, accelerate or, in any other way, worsen debtor's rights under executory contracts, solely on account of the filing of the relevant entry application, the opening decree or the granting of protective or precautionary measures.</p> <p>Any different contractual provision shall be deemed ineffective</p>	<p>Creditors affected by protective measures are not allowed to unilaterally withhold performance of, terminate, accelerate or, in any other way, worsen debtor's rights under essential executory contracts, solely on account of non-payment of claims come into existence prior to the application to access the tool</p>	<p>Changes in the shareholding interests structure resulting out of the implementation of a WURT shall not allow any contractual counterparty to terminate or modify any agreement entered into by the company.</p> <p>Any different contractual provision shall be deemed ineffective.</p>
<p>Composition with creditors (<i>concordato preventivo</i>)</p>	<p>Creditors are not allowed to unilaterally withhold performance of, terminate, accelerate or, in any other way, worsen debtor's rights under executory contracts, solely on account of the filing of the relevant entry application, the opening decree or the granting of protective or precautionary measures.</p> <p>Any different contractual provision shall be deemed ineffective.</p>	<p>Creditors affected by protective measures are not allowed to unilaterally withhold performance of, terminate, accelerate or, in any other way, worsen debtor's rights under essential executory contracts, solely on account of non-payment of claims come into existence prior to the application to access the composition with creditors with business continuity</p>	<p>Changes in the shareholding interests structure resulting out of the implementation of a WURT shall not allow any contractual counterparty to terminate or modify any agreement entered into by the company.</p> <p>Any different contractual provision shall be deemed ineffective.</p>

9. PRO vs. Concordato preventivo



✓ similarities ✓ differences

Elements of comparison	PRO	CONCORDATO
Subjective entry requirements ✓	Commercial entrepreneur with exclusion of small entrepreneur	Commercial entrepreneur with exclusion of small entrepreneur
Objective entry requirements ✓	Crisis or insolvency	Crisis or insolvency
Type of plan ✓	With going concern or with liquidation purposes	With going concern or with liquidation purposes. In case of liquidation plan, unsecured creditors shall receive a minimum recovery of 20% of their outstanding claims
Waiver to APR ✓	Applicable when all the voting classes of creditors approve the restructuring plan In any case, workers' claims shall be paid in full within 30 days from the homologation	Only applicable when the plan is with business continuity; in any case, waiver does not apply to workers' claims, which shall be paid in compliance with APR; moratorium workers' claims cannot exceed 6 months from the homologation
Debtor in possession ✓	Debtor remains in charge for ordinary and extraordinary business, but under the supervision of the judicial commissioner	Extraordinary business activities are subject to Court's authorization
Notification to the Public Prosecutor ✓	Entry application, together with relevant attachments, are notified to Public Prosecutor	Entry application, together with relevant attachments, are notified to Public Prosecutor

Elements of comparison	PRO	CONCORDATO
Appointment of Judicial Commissioner ✓	With the opening decree the Court appoints (or confirms) the judicial commissioner	With the opening decree the Court appoints (or confirms) the judicial commissioner
Approval ✓	All the voting classes of creditors must approve the restructuring plan (unanimity of classes)	<p>When the restructuring plan is with business continuity, all the voting classes of creditors must approve the restructuring plan (unanimity of classes).</p> <p>However, despite unanimity is not achieved, the plan shall be approved if the following conditions occur:</p> <ul style="list-style-type: none"> (A) liquidation value is distributed according to APR; (B) surplus over liquidation value is distributed according RPR; (C) the proposal has been approved by: <ul style="list-style-type: none"> (i) a majority of the voting classes of affected creditors, provided that at least one of those classes is a secured creditors class or is senior to the ordinary unsecured creditors class; or, failing that, (ii) at least one of the voting classes of affected creditors, other than an equity-holders class or any other class which would not receive any payment or keep any interest, or, could be reasonably presumed not to receive any payment or keep any interest, if the normal ranking of liquidation priorities were applied, in full application of APR. <p>In case of liquidation plan, the rule of majority of the claims or voting classes (if classes are formed) applies, together with the majority, on heads-count basis, where a single creditor holds the majority of claims.</p>

Elements of comparison	PRO	CONCORDATO
Applicable majorities ✓	Majority in a single class is achieved if: <ul style="list-style-type: none"> (a) majority (calculated on the basis of the claims held) of the creditors included in the class approved the proposal; or (b) 2/3 (calculated on the basis of the claims held) of the actually voting creditors approved the proposal, provided that actually voting creditors hold at least 50% of the total claims included in the class 	When the restructuring plan is with business continuity, majority in a single class is achieved if: <ul style="list-style-type: none"> (a) majority (calculated on the basis of the claims held) of the creditors included in the class approved the proposal; or (b) 2/3 (calculated on the basis of the claims held) of the actually voting creditors approved the proposal, provided that actually voting creditors hold at least 50% of the total claims in the class In case of liquidation plan, the majority is always calculated on the basis of claims (or creditors, as applicable) entitled to vote
Settlement with Tax Authority and cram – down of tax and social security liability ✓	Not applicable	Applicable
Bankruptcy offences ✓	Access to the PRO is not mentioned among proceedings that might trigger the application of bankruptcy offences	Access to the concordato may trigger the application of bankruptcy offences

10. Overview table about the regulation that shall be applicable to the companies



Exclusive authority of directors	Authority to resolve upon the access to a WURT and the relevant restructuring plan, is vested exclusively in the Board of Directors or in the sole Director, as applicable, despite any different by-laws provision. The relevant resolution must be notarized and published in the Company Register
By-laws' amendments	<p>Restructuring plan may include any amendment to the company's by-laws, including capital increase (also with limitation or exclusion of shareholders' pre-emptive rights) or decrease, and any other change directly affecting shareholding interests, as well as extraordinary transactions (merger, demerger and transformation)</p> <p>Such amendments are made effective by virtue of the homologation decree</p>
Shield against shareholders' initiatives	From the publication of the resolution to access a WURT in the Company Register, Directors may not be removed by shareholders unless a just cause, different from the access to a WURT, occurs (the relevant resolution shall be approved by the Court).
Shareholders' remedies	<p>Shareholders holding at least 10% of the corporate capital may submit competing proposal</p> <p>Furthermore, if the restructuring plan affects their rights, shareholders must be included in a specific voting class</p>
Shareholders' classes	<p>The relevant WURT may include classes of shareholders or financial instrument holders.</p> <p>Class formation is required: (i) when shareholders' (or the financial instruments holders') rights are affected or (ii) the company accesses to capital markets</p>

Shareholders' vote	Within the relevant class, shareholders vote in proportion to their shareholding interests (as resulting prior to the filing of the entry application) and according to the same rules applicable to creditors; however, shareholders' silence is accounted as a positive vote (silent-assent rule)
Distributions to shareholders under restructuring plan	The restructuring plan may include distributions to shareholders. However, if one or more classes are dissenting, the proposal can be homologated only if: (A) the recovery granted to such dissenting classes, under the restructuring plan, would be at least as favourable as that applicable to classes of the same rank and more favourable than that applicable to lower-rank classes, even if the total value allocated to shareholders was allocated to such classes; or, missing any class having equal or lower rank than the dissenting ones, (B) the amount allocated to dissenting class is greater than the total amount allocated to the shareholders. Putting it differently, distributions to shareholders shall be consistent with RPR
Disapplication of change of control clauses	Changes in the shareholding interests structure resulting out of the implementation of a WURT shall not allow any contractual counterparty to terminate or modify any agreement entered into by the company. Any different contractual provision shall be deemed ineffective.

11. Minimal glossary



“**APR**”: means *absolute priority rule*, i.e. the distribution rule under which a junior creditor is not eligible to any distribution, out of debtor's assets, until the relevant senior creditors has been fully repaid.

“**compulsory**”: means a proceedings where creditors rights may be affected by virtue of a vote or a Court’s decision.

“**consensual**”: means a proceedings where creditors rights may be affected only upon their consent.

“**consumer**”: means a person acting for a purpose which can be regarded as being outside his trade or profession.

“**debtor in possession**”: means debtor remaining fully (or, at least, partially) in charge to run the business, despite its access to a WURT. Debtor is also considered "*in possession*" when is subject to limitations only with regard to extraordinary transactions.

“**discharge**” and “**discharge of debt**”: means that enforcement against debtor of its outstanding dischargeable debts is precluded as part or outcome of a procedure which includes the realisation of the assets.

“**essential executory contracts**”: means such contracts which are necessary to allow the ordinary course of business, including supply contracts whose termination would affect the business continuity.

“**executory contracts**”: means a contract between a debtor and one or more creditors under which the parties still have obligations to perform at the time the stay of individual enforcement actions is granted or applied.

“**expert**”: means the professional appointed by the chamber of commerce upon request of the debtor, independent from all the parties, having the task to ease the negotiations between debtor and its creditors in negotiated composition.

“**Insolvency Directive**”: means Directive (Eu) no. 1023 of 20 June 2019 “on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132”.

“ipso facto clauses”: means any contractual provision that triggers an acceleration, early termination or other modification of the relevant agreement (prejudicial to debtor’s position), solely on account of the access to a WURT or the non-payment of claims come into existence prior to the application to such access.

“legge fallimentare”: means Royal Decree no. 267 of 16 March 1942.

“no creditor worse off test”: means the test designed to verify that a particular creditor receives, in the context of a reorganisation WURT, a recovery that is not lower than the recovery such creditor would receive in the liquidation scenario.

“OCC”: means crisis resolution bodies «organismi di composizione della crisi».

“over-indebtedness”: means the crisis or insolvency of any debtor not subject to judicial liquidation, administrative compulsory liquidation or other liquidation proceedings provided for in the Italian Civil code or other special laws, including: professional, small entrepreneur, agricultural entrepreneur, innovative start-up and consumer.

“Protective measures”: means interim measures granted by the Court, upon debtor’s request, having the purpose of preventing creditors’ initiatives over debtor’s assets which may affect the restructuring procedure, such as a total or partial prohibition for creditors to start or continue enforcement or precautionary proceedings over debtor’s assets.

“RPR”: means *relative priority rule*, i.e. the distribution rule under which a junior creditor is eligible to distributions, out of debtor’s assets, even if the relevant senior creditor has not been fully repaid, as long as the latter has receives a better treatment than the junior creditor.

“small enterprise” or “small entrepreneur”: any enterprise or entrepreneur which has the following (joint) requisites:

- a) in the three years before the filing of the entry application to a WURT, has been having total assets lower in value than Euro 300,000 and total revenues lower in value than Euro 200,000;
- b) total liabilities lower in value than Euro 500,000.

“Winding-up and reorganisation tools” or “WURT”: means any measure, agreement and procedure aimed at realise the recovery of business through the modification of the composition, status or structure of the relevant assets and/or liabilities or capital, or aimed at the liquidation of such assets and which, upon application of the debtor, may be preceded by the negotiated composition.

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