Agreements for debt restructuring: an attractive instrument both for debtors and creditors

The new insolvency code has introduced some novelties regarding the agreements to renegotiate the debts between the debtors and the creditors, which are in line with the new EU directive n. 1023 of 2019. The two main options available are the Restructuring verified plan and the Agreement for debt restructuring. The changes that the Reform introduced aim to revamp and make them a more attractive instrument for business operators and creditors.

The new Insolvency Code (see the article by Chiara Anceschi New Insolvency Code in Italy: what's new?) has introduced many changes to the current discipline in several domains and also in the field of **debt restructuring**.

Many commentators have underlined that first and foremost the reform aims at taking the entrepreneur out of the **business crisis** before it is too late and for this reason has provided several instruments in order to renegotiate the debts. This perspective is in line with what has been discussed at an European level and in particular with what emerges from the very recent EU Directive n. 1023/2019, which shall be implemented by the Member States by July 17th 2021 (see the article by Alberto Angeloni Business Crisis: from the EU a second chance for debtors)
The two main instruments for debt restructuring are the "**Piano attestato di risanamento**" (Restructuring verified plan, art. 56) and the "**Accordi di ristrutturazione del debito**" (Agreements for debt restructuring, art. 57). Both of them aim at renegotiating business's debts through different measures such as debt forgiveness, debt rescheduling, reduction of the interest rates on loans or even conversion of a portion of debt into equity.
The law specifically provides that all the acts that are performed for fulfilling these

agreements will not be subjected to any claw-back action (art. 166 New Code).

Restructuring verified plan

The Restructuring verified plan has become an autonomous instrument disciplined by art. 56 of the new Code – whereas formerly it was considered only in the 3rd comma, letter d) of art. 67. It is purely a private instrument that **does not require** the involvement of the **Tribunal**, neither during the negotiations nor for a validation; it only requires an **external expert** (usually an **accountant**) to certify that the plan is feasible and the data of the business is correct.

It's not necessary that all the creditors are involved, being possible that the plan is signed by a **limited number** of them.

The law requires that the plan is made in writing and contains specific content.

Agreements for debt restructuring

The Agreements for debt restructuring are now disciplined by art. 57 (previously by art. 182 bis). They can purse the aim of debt restructuring or of winding up the business. They must obtain a **validation** by the Tribunal ("**omologazione**") and then they are registered in the Business Register; they may have a content similar to that of the restructuring plan (that is, measure for restructuring a current debt in order to let the entrepreneur continue its business) but, as said, can also aim just at paying off all the creditors. It is necessary that **at least 60% of the creditors** adhere to the agreement; this percentage is reduced or augmented in specific cases. They can be signed both by commercial entrepreneurs and non-commercial ones.

A peculiar feature is that the Agreement for debt restructuring **extends its effects upon creditors who did not express their consent.** However, the credits of the non-adhering creditors will be **fully paid** by 120 days from the Tribunal's validation in case the debts are already expired; or by 120 days from the day the debt expires.

The effects of the agreements may extend to the patrimony of the business partners who are personally and jointly & severally liable.
In the application that the debtor deposits at the Tribunal for the validation (omologazione), s/he can also ask that all the executive and precautionary measures upon his/her patrimony are suspended (so called "**automatic stay**"; these are the so-called "**protective measures**": art 54).
In this way, the creditors will be prevented from starting a proceeding to collect their credits or for securing their credits.
The entrepreneur can submit this request even during the negotiations and before the deposit of the validation request, submitting all the relevant documentations and a proposal of the agreement together with an accountant's declaration that certifies that debtors and creditors are negotiating the agreement in line with the law's provisions.

Extended effects agreement

Another relevant change regards the so-called "extended effects agreement" ("accordi ad efficacia estesa", art. 61, former art. 182 *septies*). In this case, **creditors** are divided into **different categories** on the basis of their juridical and economic position, and the agreement binds non-adhering creditors of the same category even if their credits are not fully paid.
To have this it is necessary that:
– creditors have been informed and could take part in the negotiations
– the agreement is not a winding-up agreement and creditors are satisfied mainly from what comes from the on-going business
– the credits of the adhering creditors of each category represent at least 75% of all the creditors of that category (→ the effects of the agreement are extended to the remaining 25% of creditors)
– the non-adhering creditors are satisfied in the same or in a better way compared to what

they would have obtained in a judicial winding up procedure

– the agreement is notified

The **non-adhering creditors** can file an opposition. However, it is never possible to impose positive actions to the non-adhering creditors (such as new loans).

Another significant novelty is that if the agreement does not aim to pay off the creditors, it binds both the **financial creditors** (the banks) and all the other creditors such as the **Institutional creditors** (Tax Agency for example).