

The New Italian Insolvency Law: A Banker's View

TMA European Conference

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19 June 2009

Agenda

- Introduction
- Main principles
- Opportunities for investment and restructuring
- Alternative legal procedure for restructuring
- Introduction to Augusta & Co.

Introduction

Between 2005 and 2007, the Italian government has introduced a series of new laws reforming Italy's insolvency regime

- The new regime incorporates welcome new procedures and opens new opportunities for potential investors
- We will try and answer a few questions:
 - what are the key elements of novelty?
 - has the new regime been applied?
 - what are some of the outstanding issues?
- This is “a banker's view” and does not purport to be comprehensive from a legal point of view

The main principles of the reform

Principal aim of the reform: safeguard the going concern and its goodwill, through:

- early rescue from crisis, before it turns into insolvency
- facilitating the restructuring of debt

New means introduced to these ends:

- new composition with creditors arrangements, both with and without the courts' supervision, with greater scope for negotiations/ settlements between debtor and creditors
- claw back actions have been weakened
- repositioning of the court's roles
- new powers have been granted to creditors in handling crises

New opportunities for investment and restructuring



The reform offers new flexibility in restructuring, which may be adapted to different degrees of crisis and allows companies to restructure their debt before the situation becomes irreversible

Distressed debt investors may also extract more value from getting involved in critical situations, through:

- acquisition of business assets: important opportunities are now available in light of the reduction of/exemption from the claw back action
- acquisition of business equity : no significant novelties; in addition, the in court restructuring process is always subject to the approval of 51% of the creditors
- acquisition of debt for trading purposes: the holder of 51% of the debt of a company is able to allow the restructuring through the filing and approval of the composition proposal (post bankruptcy composition)

Alternative legal procedure for restructuring – summary

The following alternatives are now available to companies and investors:

- Out of court
 1. New “reorganisation plan” (Art 67)
 2. New restructuring agreement (Art 182 bis)

- In court
 1. New pre-bankruptcy composition with creditors
 2. New post-bankruptcy composition with creditors
 3. Prodi Bis/Marzaro law (incorporating new composition with creditors regime)

Alternative legal procedures for restructuring – details

Procedure	In/Out of Court	Timeframe	Junior Cram-down?	Comments	Recent Examples
"Reorganisation" Plan (Art 67)	Out	Short	No	<ul style="list-style-type: none"> - Debtor remains entitled to manage biz. - Limited biz. impact due to no publicity - Certification of restr. Plan by third party expert - Exemption from claw back actions - Requires unanimous acceptance from lenders** 	Ferretti (to be completed) Tiscali (to be completed) Arcotronics SEA Metecno Pininfarina (phase 1)
Restructuring agreements (Art 182 bis)	Out*	Quite short (2-4 months longer than Art 67)	No	<ul style="list-style-type: none"> - Debtor remains entitled to manage biz. - Requires court supervision, validation and publicity - Certification of restr. plan by third party expert - Exemption from claw back actions - Effectively requires unanimous acceptance from lenders*** 	Caffaro Flexible Packaging Pininfarina (phase 2) Gabetti Property Solutions
Pre-bankruptcy agreement (Concordato preventivo)	In	6-9 months	Yes	<ul style="list-style-type: none"> - Each Italian entity of the Group must file - Debtor entitled to manage biz. but under supervision - Court supervised proceeding involving all creditors - Exemption from claw back actions - Requires majority approval (50.1%) from creditors - Effective after court approval ("Omologa") 	Favini Kartogroup Gio Style Faber Factor Bear
Post-bankruptcy agreement (Concordato fallimentare)	In	Long (years)	Yes	<ul style="list-style-type: none"> - Available only after insolvency declaration - Can be filed only by creditors within first 12 months - Business run by trustee - Requires majority approval (50.1%) from creditors - Claw back, set aside and other litigation risks for lenders - Effective after court approval ("Omologa") 	OP Computers Magiste Re La Molisana Festival Crociere
Prodi Bis/Marzaro	In	Long (years)	Yes	<ul style="list-style-type: none"> - Alternative to bankruptcy available to large corporates**** - Appointment of administrators by Ministry of Production - Business run by administrators - Administrator to prepare restructuring plan - Requires majority approval (50.1%) from creditors - Claw back, set aside and other litigation risks for lenders 	IT Holding Maflow Alitalia Parmalat Antonio Merloni CIT

* However, requires Court supervision, validation and publicity

** Could be effective irrespective of % acceptance, but "de facto" requires unanimity for LBO's

*** Could be effective with 60% creditor approval, but "de facto" requires unanimity for LBO's

**** 500 employees, €300m debt

Issues to be aware of

The Italian regime remains fundamentally debtor friendly:

- No foreclosure right/special rights for secured creditors
- Enforcement of share pledges in LBO's risky: only 1-2 cases historically
- No equivalent to "pre-pack"

The reform is incomplete: several "grey" areas

- Timing: where court is involved, the process could take years
- Political influence: Marzarno law adapted to fir specific cases (Volare, Alitalia)

Appendix: recent restructuring case studies: Ferretti



- 2007 LBO by Candover
- Entry EV of €1.7bn (11.5x)
- €1.2bn of LBO debt
- EBITDA declined from €150m (2008) to €90 (2009 BUDGET)
- Deep liquidity crisis
- Restructuring required new money for €85m, €700m debt write off and equity split 48% new owners/52% creditors
- Successful application of new “reorganisation plan” (Art 67)

Appendix: recent restructuring case studies: Ferretti

Ferretti SpA

Italian company engaging in the design, production, and sale of motor yachts and sports boats

FYE 31-AUG € Million	FY07	FY08	Post Restr. FY09	Post Restr. Equity%	Comments
EBITDA	148.0	150.0	90.0		
Cash			(54.0)		
"Super Senior" Debt (RCF)			80.0		New RCF provided by Senior Lenders
Senior Debt	895.0 *		480.0		32% Senior write-off 28% and take 32% equity stake
2nd Lien Facilities	120.0		0.0		14% 9.5yr Eur + 475. Full write down, 14% equity stake
Mezz	200.0		0.0		6% 10yr 4% cash, 4% PIK. Full write down, 6% equity stake
Net Debt	1,215.0		506.0		The debt-for-equity swap leaves Ferretti with €560m debt, paying part cash, part PIK
Original Equity	485.0				
Candover	291.0				Candover acquired 60% in October 2006
Implied Permira (10%) and mgt (30%)	194.0				
New Equity					
Senior Management			70.0		37% Cash equity injection from founder Noberto Ferretti and Senior Management
Mediobanca			15.0		8% Cash equity injection
Other Management					3%
Enterprise Value	1,700.0		591.0		97%
Debt Lev. through Senior	6.0x		6.2x		
Debt Lev. through 2nd Lien	6.9x				
Debt Lev. Through Mezz	8.2x				
EV Multiple	11.5x		7.7x		100% At implied valuation of equity injection

Note: Original Pricing: €175m 7yr Amort A E+200bps, €270m 8yr B E+250 bps, €270m 9yr C E+300bps, €130m 7yr Rev E+ 200bps, €50m 7yr capex E+200bps

Augusta & Co



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- is an independent merchant bank wholly owned by the partners
- was founded in 2002, and has advised on €3.5bn of completed transactions
- employs 20 bankers and three senior industry advisers
- has a pan-European approach with a focus on the UK, Germany and Italy

Augusta provides a full service corporate finance advisory offering

- combines capital placement/restructuring with M&A
- brings deep capital markets focus & experience
- has been involved in a number of complex restructurings/covenant amendments

**Strategic Corporate
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Debt Restructuring

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M&A

Appendix: Augusta & Co contacts

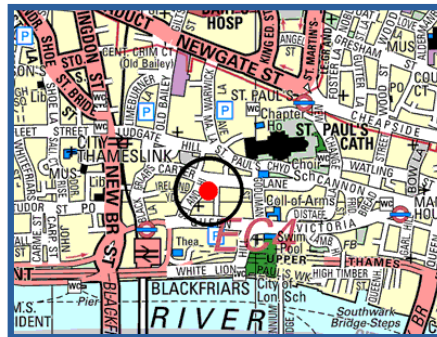


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Lizenz-Nr. 6233-0907-1

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